

**CONSUMER PRODUCT SAFETY COMMISSION OVER-  
SIGHT: CURRENT ISSUES AND A VISION FOR  
THE FUTURE**

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**HEARING**  
BEFORE THE  
SUBCOMMITTEE ON COMMERCE, TRADE,  
AND CONSUMER PROTECTION  
OF THE  
COMMITTEE ON ENERGY AND  
COMMERCE  
HOUSE OF REPRESENTATIVES  
ONE HUNDRED ELEVENTH CONGRESS  
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**CONSUMER PRODUCT SAFETY COMMISSION  
OVERSIGHT: CURRENT ISSUES AND A VI-  
SION FOR THE FUTURE**

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**THURSDAY, SEPTEMBER 10, 2009**

HOUSE OF REPRESENTATIVES,  
SUBCOMMITTEE ON COMMERCE, TRADE,  
AND CONSUMER PROTECTION,  
COMMITTEE ON ENERGY AND COMMERCE,  
*Washington, DC.*

The subcommittee met, pursuant to call, at 10:10 a.m., in Room 2322 of the Rayburn House Office Building, Hon. Bobby Rush [Chairman of the Subcommittee] presiding.

Members present: Representatives Rush, Schakowsky, Sarbanes, Sutton, Stupak, Green, Barrow, Castor, Braley, DeGette, Dingell, Waxman (ex officio), Radanovich, Whitfield, Pitts, Gingrey, Scalise, and Barton (ex officio).

Staff present: Michelle Ash, Chief Counsel; Anna Laitin, Professional Staff Member; Tim Robinson, Counsel; Angelle Kwemo, Counsel; Will Casey, Special Assistant; Miriam Edelman, Special Assistant; Jeff Wease, Deputy Information Officer; Lindsay Vidal, Press Assistant; Brian McCullough, Minority Senior Professional Staff Member; Shannon Weinberg, Minority Counsel; Will Carty, Minority Professional Staff Member; and Sam Costello, Minority Legislative Analyst.

**OPENING STATEMENT OF HON. BOBBY L. RUSH, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF ILLINOIS**

Mr. RUSH. The subcommittee will come to order. Good morning, members and also the commissioner and all of the other folk who are gathered in the room. This subcommittee is called to order now for the purposes of an Oversight Hearing on Current Issues and a Vision for the Future for the Consumer Product Safety Commission, and I welcome everyone to this hearing. The Chair now without any other delays, the Chair recognizes himself for 5 minutes for the purposes of an opening statement.

The Consumer Product Safety Improvement Act was one of the premier accomplishments of the 110th Congress. The law created basic safety standards for keeping toxic lead and phthalates out of children's products, engaging Consumer Product Safety Commission vital new resources and authority, and establishing a product testing system that would ensure product safety.

I would like to welcome Chairman Inez Tenenbaum, who is the ninth Chairman of the Consumer Product Safety Commission. She

hails from the great State of South Carolina. Chairman Tenenbaum is nationally known and is an advocate for children and families. She served with distinction as the State of South Carolina's Superintendent of Education for two terms. I am looking forward to seeing and hearing from Chairman Tenenbaum as she steers the process of implementing the CPSIA. Under her leadership, the needed implementation will go far more smoother than other previous chairmen and the CPSC will work effectively utilizing the increased resources that are now at its disposal. This is why I am so pleased to welcome Chairman Tenenbaum today and to hear from her about the Commission's new direction and its future vision.

It is mentionable that the Chairman now has a full complement of commissioners, something which it lacked for far too long under the previous administration. I think that the President has chosen well in nominating Robert S. Adler and Anne Northup as commissioners. Commissioner Adler has a deep history of experience as a former advisor to two CPSC commissioners, Commissioners Pittle and Steorts.

Commissioner Northup is the former Congresswoman from Kentucky's third district and the mother of six, who served for 9 years in the House of Representatives. As a congresswoman, Commissioner Northup founded the House Reading Caucus and co-chaired the Congressional Coalition on Adoption which further shows her own personal commitment to helping and defending children.

Madam Chair, when you took the helm you showed great courage, sound judgment and a purpose for rulemaking over our safety. One of the first agenda items that you scheduled was whether to include crystal and glass beads in children's jewelry from the lead content restrictions in Section 101(a) of the CPSIA. You applied the facts as you found them to the CPSI lead limits and to the real world facts and foreseeable possibilities. For example, you talked and wrote about how children handled and played with this jewelry by mouthing, ingesting and swallowing the beads and how any amount of lead constituted too much lead in these beads. You are willing to grapple with thorny issues and the business of our Pacific Rim trading products who today manufacture as much as 85 percent of our toys and 95 percent of our solvents, and almost 60 percent of our electrical products, shows your leadership and your vision. Unfortunately, more than 85 percent of our country's recalled products are also imported.

Chairman Tenenbaum, I will ask you questions this morning based on remarks you have made in your public statements on some substantive areas that pose special safety and recalled challenges and how you will go about implementing the CPSIA. I am also very interested in hearing how you see the CPSIA's transitioning from the Nord-era to Tenenbaum-time. We will look for a shiny, new product safety product testing facility with more employees and more appropriated dollars.

And as I close, I want you to comment as succinctly as you can about the CPSC's timeline for adopting new rules under CPSIA, about some of the things that the GAO advised us and other improvements that you will make at the agency. I look forward to

hearing your testimony and I thank you again for visiting with us today.

Mr. RUSH. The Chair now recognizes the ranking member, Mr. Radanovich for 5 minutes.

**OPENING STATEMENT OF HON. GEORGE RADANOVICH, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF CALIFORNIA**

Mr. RADANOVICH. Thank you, Chairman Rush, for calling this important hearing today.

The CPSC is a small but important agency whose mission is implementing and enforcing our nation's Federal Consumer Protection Safety Laws. The Commission and its staff work hard to ensure consumer products are safer when they reach the homes of our constituents.

We all remember the increase in commission-mandated recalls in 2007. Weekly headlines detailed various toy dangers, most of which were due to manufacturers' failure to comply with existing standards, for instance, lead paint. To their credit, the Commission's staff was able to affect more recalls in 2007 than in any other year in the CPSC history and despite the Commission's diligence, some observers claim the increase in recalls was evidence that reform was necessary and spurred the enactment of the Consumer Product Safety Improvement Act, also known as CPSIA.

CPSIA instituted the most sweeping changes to the Commission's regulatory environment since it was created. Among the changes, the law imposes many new requirements on businesses in the name of providing greater assurances that consumer products reaching our ports and placed on our store shelves are safer. While no one disagrees with creating safer products and it is good for public policy, we don't all agree on how to get there. The law has had consequences detrimental to many hardworking Americans. Put simply, the law is not working the way that many of us thought that it should work.

In April, hundreds of business owners that want to abide by the law came to Washington and voiced their concerns. The new law is crippling many honest businesses, particularly small businesses with burdensome and costly testing requirements for children's products, many of which the evidence shows are completely safe, and despite the Commission's stays of enforcement protecting many manufacturers are still being required to prove that their products are CPSIA compliant. As a result, testing for perfectly safe products is costing businesses millions of dollars, inventory losses for safe but technically noncompliant products is estimated in the billions and there is no discernible improvement in child safety.

Many small and home-based businesses are already hurting from the economic recession. On top of the decrease in consumer spending, manufacturers and retailers are now faced with the new cost of complying with CPSIA and if they can comply at all. Many of these same small and medium-size businesses will also suffer punitive effects of the cap and trade legislation passed by the House and the healthcare legislation this committee reported out last month.

We committed nearly \$1 trillion in stimulus spending for various industries, bailed out the auto industry, bailed out financial firms, bailed out homeowners and helped purchase new cars for some consumers, but where is the relief for small businesses who we now burden with this regulation. These small businesses are beginning to think that Congress is waging war against them. Providing sensible regulatory relief to those affected by CPSIA would be a no-cost stimulus for the very businesses we are counting on to create new jobs and to bring us out of an economic recession, and it is the right thing to do.

The biggest problem with CPSIA I see is that it doesn't distinguish between risky and safe products. The law strips the Commission of discretion in granting CPSIA exemptions for children's products. The Commission confirmed this interpretation of the law when it voted to deny exemption petitions because the law simply does not permit exemptions if any lead can possibly be absorbed, even if the staff believes the products are not harmful. This standard is more stringent than the FDA's limits for milk and for water, the water our children drink.

The law is not only impacting businesses, it is also straining the Commission's resources as they process the thousands of comments, petitions, rulemakings and other CPSIA-related actions. The Commission has done the best it can with the resources that the appropriators granted to increase its staff in order to meet the stringent deadlines required by law, but it has not received everything we authorized and therefore, needs relief from these tight timelines.

I commend the Commission for finding creative ways to provide some relief to businesses with a few commonsense exemptions and stays of enforcement. Unfortunately, some of these actions are only temporary and they don't address the bulk of the problems, but the highlight of the recognition that compliance with the law as written is impossible for many businesses, and it won't improve safety. I am disappointed that we will not hear from any witnesses from the many businesses adversely affected by the new law, but I look forward to a robust conversation with the new Chairman on these matters.

Mr. Chairman, I appreciate your desire to conduct this oversight hearing into the Commission's priorities under a new administration. It is clear that the top priority for all of us should be to fix the law that we wrote so that it works for everybody. A one-size-fits-all approach is not working and will not improve safety. The time has come for us to work together and fix the problem by restoring flexibility for the Commission to determine what presents a real risk to children's safety, and appropriately target those risks and I stand ready to work with you on this, Mr. Chairman, and I welcome Chairman Tenenbaum to the committee. Thank you.

Mr. RUSH. Thank you. The Chair now recognizes the Chairman of the full committee, Mr. Waxman, for 5 minutes for the purposes of opening statement.

**OPENING STATEMENT OF HON. HENRY A. WAXMAN, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF CALIFORNIA**

Mr. WAXMAN. Thank you very much, Mr. Chairman, for holding this important oversight hearing and I want to welcome Chairman Tenenbaum to this hearing today, as well.

Last year Congress enacted the truly historic legislation on product safety. Our product safety system—and especially our toy safety system—was terribly broken. We saw record recalls and the total loss of consumer confidence in the safety of products, and children were killed and horribly injured by defective and dangerous products, and the stories were shocking. The situation was unacceptable to the American people and Congress responded. Following a lengthy and careful process, we enacted legislation that is strong, well-designed and effective.

The law bans lead in children's products, a step that is decades overdue. There is no safe level of lead and no reason that children should be exposed to lead in their toys. The law establishes a safety net for product safety that many consumers already assumed was in place. For the first time under this law, manufacturers need to demonstrate their products are safe before they can be sold. The law bans phthalates in certain children's products in recognizing science that shows these chemicals to be dangerous, especially to the youngest and most vulnerable children.

And finally, the law addresses systemic problems at CPSC to provide them with stronger legal authorities to carry out their mission and additional funding for the agency, and we restored the Commission to its full size of five commissioners. This is a key step that enables the Commission to carry out its critical mission after years of neglect and dysfunction. So in short, the law is a good, strong one and it vastly improves our children's health and safety.

Now that we are a year away from the recalls, the most dramatic stories have left the front pages, some suggest that we don't really need such a strong law but the fact remains that the system we had in place was a failure. This law was necessary. To retreat now from the proven consumer protections achieved under this law would be a huge mistake. There is no question however, that implementation has at times been uneven. Since the law went into affect, there has been unnecessary and widespread confusion among businesses and consumers, and I am committed to working with the Commission and with interested members of Congress and to you particularly, Mr. Chairman, to assure that moving forward, implementation of the law is clear and comprehensible.

And that is why I am very pleased that Ms. Tenenbaum is here and we will hear from her about her plans for the Commission and for the law. I have great confidence in the Chairman together with the other four commissioners that they will restore the agency to one capable of carrying out this law and its entire mission effectively and efficiently. I look forward to hearing the Chairman's testimony and I look forward to engaging in a productive relationship with leadership that is truly committed to protecting all consumers, especially our children.

Thank you, Mr. Chairman.

Mr. RUSH. The Chair now recognizes the ranking member of the full committee, the gentleman from Texas, Mr. Barton, for 5 minutes.

**OPENING STATEMENT OF HON. JOE BARTON, A  
REPRESENTATIVE IN CONGRESS FROM THE STATE OF TEXAS**

Mr. BARTON. Thank you, Mr. Chairman, and thank you, Chairwoman, for being here.

I voted for the bill last year. I was on the conference committee along with Chairman Waxman and Mr. Dingell and Mrs. Schakowsky and others so I am a supporter of the bill. Having said that, I listened with some astonishment to what our distinguished Chairman, Mr. Waxman, just said. I interpret what he said to mean that it's just a problem with implementation. It is not a problem with implementation.

As you have said, Madam Chairwoman, the law doesn't give you the flexibility to do some of the things that you have been encouraged to do to implement the law. We need to change the law. We need to perfect it. We need to modify it. We need to give some flexibility and some discretion to your agency to implement this law.

I and Mr. Radanovich and others have repeatedly asked Chairman Waxman to hold a markup or work with us on a bipartisan basis to come up with a bill to fine tune the law that we passed last year. We started making those requests informally in January. Today is a hearing which is a good step, but that is all this is. It is a hearing. We need to do more, in my opinion, than hold a hearing. I have got right here—I would say that is 200 letters, maybe 150 of small businesses around this country that have written to myself and to the Chairman and other members of the committee to do something to fine-tune the law.

Mr. Radanovich is going to ask unanimous consent at some point in time to put those letters in the hearing record. We have products before us. The dress that is in front of Mr. Radanovich can't be tested because if you test it, it destroys it. These products are going to be pulled off the shelves because the cost of the test is more than the value of the products that are sold. There should be some commonsense implementation, some commonsense refinement. We are not trying to change the lead standard. We are not trying to backpedal on the intent of the law, but when you can't sell an all-terrain vehicle because of concern that a child is going to ingest the tailpipe or something like that, there needs to be some discretion given to the regulatory agency to use a commonsense approach to implementing the regulations.

So, Mr. Chairman, I am glad that you are holding this hearing. I am going to submit my formal statement for the record. I hope it doesn't—I know you are a White Sox fan and not a Cubs fan, but I hope it doesn't take the Cubs winning the pennant before we decide to act to change this bill. You know, we need—and the good news is that what we have done, it is not that difficult, and that it can be done in a bipartisan basis, and it can be moved out of committee, and it can be moved to the House and the other body for the President to sign in the next 2 to 3 months. I mean, this is not a huge mountain that we are trying to overcome and there is not—if we get past the insistence that it is a perfect bill and it

is like the Ten Commandments, you can't change a letter even in any of the Ten Commandments, we can get this done, and I hope that is what this hearing is about is finding a way to get it done.

With that, Mr. Chairman, I yield back.

Mr. RUSH. The Chair wants to thank the ranking member and wants to ensure the ranking member that we will get something done before the Aggies win the BCS.

Mr. BARTON. It could happen, Chairman.

Mr. RUSH. The Chair now recognizes the Chairman Emeritus of the full committee, my friend from Michigan, Mr. Dingell, for 5 minutes.

**OPENING STATEMENT OF HON. JOHN D. DINGELL, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF MICHIGAN**

Mr. DINGELL. Mr. Chairman, I commend you for holding today's hearing. It is an important one. I would like to extend my warm regards and welcome to Chairman Tenenbaum and I would like to thank her for appearing before us today to discuss issues facing her agency and her vision of the agency's future.

I want to make it very clear, Mr. Chairman, this hearing is needed. It is oversights in the way that it should be conducted and again I commend you for it.

A long time ago, a dear friend of mine by the name of John Moss, then a member of this committee, and I in this room held a series of hearings which led to the enactment of legislation creating the consumer product safety which he and I and other members were co-sponsoring. Last year, my dear friend, the ranking Republican member of this committee, and I got together with other members of this committee including you, Mr. Chairman, all in a sense of concern about the fact the Consumer Product Safety Commission was not able to do its job because of budget cuts, personnel cuts, demoralization, the inadequacy of researchers and personnel to do its job. And from that came the successor Act to the original Consumer Product Safety Act which was passed in '72, and which returned it somewhat, and the Commission somewhat, to the state that it had had at the time that we offered the first legislation.

Now, I want to make it very clear that as the original author or the remaining original author of the Consumer Product Safety Act and the author of last year's legislation, I feel very strongly about the needs for strong protection for the nation's consumers. And I feel very keenly that the Consumer Product Safety Commission who has not been able to do its job because of the deregulatory attitude and a skimpy attitude with regard to funding in the nation's regulatory agencies. And so with my colleagues on this committee, I wholeheartedly supported a restoration of a good regulatory framework to ensure the safety of consumer products distributed in the commerce of the United States, particularly those meant for use by children. And that is the feeling which I shared with my colleagues on this committee and we tried to see to it not only did they get the authorities and use the authorities which they had at the CPSC but also that they got the researchers which had been permitted to shrivel in a most lamentable fashion. Indeed, to laughable proportions compared with those of other federal regu-

latory agencies so that the agency was in effect completely neutered and incapable of doing its business but we thought we had corrected that, and I would note that until recently CPSC might well have been described as a moribund agency, hampered by inadequate funding and all too limited statutory mandates.

For these reasons, we did what we did in terms of the Consumer Product Safety Improvement Act, CPSIA, which I have alluded to earlier which was ultimately signed into law by President Bush last August. CPSIA is meant to bolster the agency and to enhance its authorities in order to improve CPSC's ability to carry out its fundamental purpose, again the protection of consumer health and safety.

It should be noted though that a funny thing happened on the way to the forum. Our dear colleagues on the other end of the building called the United States Senate got into the act and with profound ignorance of the way the law worked or the intention of this committee and the authors of the legislation, proceeded to do extensive redrafting and it created difficulties which we were unable to cure in the conference between the House and the Senate. We had abundant outside assistance which confused the issues further, from consumer representatives and enthusiasts who did not know how government works or how government should work, and we had considerable messing around from both the Senate and from this body which has created confusions which remain today.

Now, I remain concerned about the difficulties that have been encountered in the implementation of the CPSIA as improved by the United States Senate. I would remind all persons that legislation passed this committee unanimously in a bipartisan fashion and again I commend my friend, the ranking minority member, for his leadership in this matter and his cooperation and assistance. And it passed the House unanimously and then it came back from the Senate and all of a sudden we had a lot of negative votes because people were honestly concerned about the confusion that had been inflicted by the United States Senate through its own amendment process and through the process which we sought advice in the country. In any event, there appears now to be problems and I am hopeful, Mr. Chairman, that we will be able through this process to ferret them out and to correct them, and indeed to find out what they might be and how they are impacting upon the American people, upon consumers and upon businesses.

In January on the 30th, in a letter to the committee, former CPSC Chairman Nord wrote, "The timelines in the law are proving to be unrealistic," which in fact, they are, and then "[CPSC] will not be able to continue at this pace without real risk of promulgating regulations that have not been thoroughly considered." Moreover, Chairman Nord stated, "Although CPSC staff has been directed to move as quickly as possible to complete its work, short circuiting the rulemaking process gives short shrift to the analytical discipline contemplated by the statute."

In brief, Mr. Chairman and Madam Chairman, I intend to use my time today to discuss with you whether you share this view and more specifically whether you believe that CPSIA contains realistic deadlines for rulemakings and compliance as well as too little implementation discretion to CPSC. These problems have triggered a

number of meetings between members of the House and Senate in which it discussed that perhaps maybe the House and the Senate should pressure CPSC to come to conclusions which may or may not be supported by the law. And I wish to state with great clarity that it is not my intention to undo anything that has been achieved via CPSIA but rather to discover what action by this committee as a part of its oversight may be necessary to correct any shortcomings that have been inflicted on the law and on the people of the United States by the actions of our dear friends in the Senate who have confused in a splendid fashion an otherwise excellent statute.

I want to thank you, Mr. Chairman, and thank you, Madam Chairman, for coming before the committee today and I look forward to a frank and productive discussion about the matters currently confronting the CPSC as well as the future of the agency in the hope that perhaps our current efforts may achieve without the assistance of our dear friends and colleagues in the Senate the kind of confusion that has been inflicted upon your agency in the time since we passed CPSIA. I thank you, Mr. Chairman.

Mr. RUSH. The Chair thanks the Chairman Emeritus and now the Chair recognizes the gentleman from Kentucky for 2 minutes for the purposes of opening statements.

**OPENING STATEMENT OF HON. ED WHITFIELD, A REPRESENTATIVE IN CONGRESS FROM THE COMMONWEALTH OF KENTUCKY**

Mr. WHITFIELD. Thank you, Chairman, for having this hearing today.

I also was a conferee on this legislation that met with the Senate to adopt this legislation and it passed overwhelmingly in the House and also in this committee as former Chairman Dingell said. I think we also have a responsibility to protect our children and this legislation does precisely that but it also has had unintended consequences and many members have already discussed that today. The timelines are in question, the exemption authority that was taken away really from the consumer protection Commission. The sad thing is now the standard is so strict that the CPSC does not have the flexibility to exempt seemingly obvious products that do not contain a lead or other chemically hazardous materials and so we have a lot of small business people today spending thousands of dollars to prove that their product is safe, knowing full well that it is safe.

And so it seems to me that it is not right that Congress passes a law so stringent that the Commission with the authority to enforce these laws does not have any flexibility. And I think we have an obligation to the people of the United States, particularly at this time of an economic downturn that we do not want to make it more difficult for small business people to stay in business, and we need to do everything that we can do to correct the problems that are in the legislation that was passed overwhelmingly by the House and Senate.

Now, I yield back the balance of my time.

Mr. RUSH. The Chair thanks the gentleman. The Chair now recognizes my friend, the Vice Chair of the subcommittee, the gentlelady from Illinois, Ms. Schakowsky, for 2 minutes.

**OPENING STATEMENT OF HON. JANICE D. SCHAKOWSKY, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF ILLINOIS**

Ms. SCHAKOWSKY. I thank you, Chairman Rush, and I want to welcome Chairman Tenenbaum. We had the pleasure of meeting each other recently. I appreciate very much your reaching out to me and hearing about your commitment to make the Consumer Product Safety Commission and agency that will truly live up to its name and I look forward to working with you.

I too wanted to talk about the Consumer Product Safety Improvement Act. There were many, many important provisions in the bill which I think everybody would agree to. Some that I worked on, including mandatory infant and toddler durable product standards and testing, and the Danny Keysar Child Product Safety Notification Act, and the first mandatory safety standards for children's toys are going to help grandmothers like me feel confident when I buy supplies or gifts for my grandkids that those things are going to be safe.

And I know that there have been problems with implementation of the new law, particularly under the previous leadership at the CPSC. I personally think that the law can be successfully implemented and I just wanted to point out some flexibility that I do see in the law. The law includes language that empowers the CPSC to exempt certain materials from the testing and certification requirements, and to relieve those manufacturers of products that are in no danger of violating the new standards, and I know that the CPSC has begun to apply some of those exclusions and so I think there are opportunities within the existing bill to deal with complications. For example, I know that the CPSC has exempted from the lead testing requirements components that can't be accessed by a child, components of electronic devices, the inside, intended for children, a stay of enforcement of the lead and phthalates testing rules for a year or so. A number of things have been done and I think we should first before we change the law, look at those and see if they can provide the kind of relief to issues that have been raised today.

I thank you, Mr. Chairman, and I yield back.

Mr. RUSH. The Chair thanks the gentlelady. The Chair now recognizes the gentleman from Louisiana, Mr. Scalise, for 2 minutes for the purposes of opening statements.

**OPENING STATEMENT OF HON. STEVE SCALISE, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF LOUISIANA**

Mr. SCALISE. Thank you, Mr. Chairman. I want to thank you and Ranking Member Radanovich for having this hearing and I would like to congratulate Chairwoman Tenenbaum on her confirmation and welcome her before our subcommittee.

The Consumer Product Safety Commission has a very important job. It protects consumers and families from products that may

pose a hazard or injure children. We must ensure that the CPSC effectively carries out this mission and has the tools to do so. As the father of two young children, I want to be assured that the CPSC does its job and that the toys all children are playing with are safe.

One particular issue before the CPSC that has affected my district as well as many across this country is Chinese drywall. After Florida, Louisiana has had the most cases in the Nation of toxic drywall. The Louisiana Department of Health and Hospitals has received over 800 complaints about Chinese drywall and it is estimated that the amount of Chinese drywall brought into Louisiana after Hurricanes Katrina and Rita could potentially affect approximately 7,000 homes. My office has received numerous complaints from constituents affected by Chinese drywall. One man who called lost his home to Hurricane Katrina and had to relocate his family to another town, only to find out that the home he moved into was built with Chinese drywall. Another constituent realized he had Chinese drywall in his home when his wife, who was four months pregnant, wasn't gaining any weight. Her doctor told her to move out of the home and now she and her husband are living in separate towns while their home is repaired.

During these economic times, many of our constituents cannot afford to purchase another home or rent a second one while repairs are being made. It is clear that Chinese drywall is wreaking havoc in homes, charring electrical wires, corroding metal and causing serious health problems. We must determine the origin and scope of the toxic drywall and we must take action against those who introduced the drywall into American markets. It is also important that we continue to testing in order to realize the potential health problems that Chinese drywall can cause.

Chairwoman Tenenbaum, in your testimony you mentioned that the CPSC is committed to finding answers and solutions for all the homeowners impacted by this issue. I want to know what those answers are and solutions you have found. The citizens of Louisiana and elsewhere in the country who have been impacted by Chinese drywall deserve clear answers and solutions. Those affected in my State have already been through so much and now 4 years after Katrina many once again have to rebuild their homes. This is unacceptable and we must ensure that no one has to encounter these problems in the future.

I look forward to your testimony and I yield back.

Mr. RUSH. The Chair recognizes now the gentlelady from Florida, Ms. Castor, for 2 minutes for the purposes of opening statements.

**OPENING STATEMENT OF HON. KATHY CASTOR, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF FLORIDA**

Ms. CASTOR. Thank you, Mr. Chairman, very much for calling this important oversight hearing of the Consumer Product Safety Commission.

Welcome to Chairman Tenenbaum. I am pleased that we have this opportunity to discuss the Consumer Product Safety Act with you. You have outstanding experience and your background as a teacher and the State School Superintendent for the State of South Carolina demonstrates your commitment to families and consumer

issues and you are off to a great start, and in many ways, this hearing is going to be very different than if we had proceeded with the one scheduled a few months ago. At that time, many concerns were expressed to me about the CPSIA implementation, many of them stemming from the lack of information and what to expect from the Consumer Product Safety Commission. Rumors were flying that children's bookstores would be forced to close or thrift stores would not be able to sell toys at all, but under your leadership in the last few months many of these concerns have been addressed, and I thank you for that.

I appreciate that the assignment that was given to the Consumer Product Safety Commission was not an easy one. The new Consumer Product Safety Improvement Act was a fundamental shift from a reactive product safety regime to a proactive approach. Before parents just had to hope that toys they were buying for their kids were safe and watch for product recalls, and all too often the prevailing consumer safety policy with regard to toys was caveat emptor and this resulted in a disastrous 2007 Christmas shopping season when popular toy trains had friendly, inviting faces painted on them with Chinese lead paint, and one popular toy called Aqua Dots allowed children to arrange brightly colored beads into designs and then bind them together with water. Unfortunately, the beads gave off the so-called—the drug GHB when swallowed, so Congress gave the CPSC a big responsibility last year and there have been some bumps in the road.

For too long there has been a lack of guidance from the agency for retailers and manufacturers and some of the deadlines for guidance came and went without the required guidance but I am extremely encouraged by the actions taken by the Commission in recent months. The quality and quantity of the proposed rules that have come out just since your swearing in is truly encouraging and like my colleague from Louisiana, I do hope you will address the important Florida issue important to many other States and that is the unsafe Chinese drywall that has been used in the construction of homes. It is making many families in Florida sick. Families should not have to worry that the building materials in their walls emit corrosive, toxic gases into their home so I look forward to hearing more from you about what the Commission is doing about toxic drywall and what we can do to help on that issue.

Thank you being here. I yield back my time, Mr. Chairman.

Mr. RUSH. The Chair recognizes the gentleman from Pennsylvania, Mr. Pitts, for 2 minutes.

**OPENING STATEMENT OF HON. JOSEPH R. PITTS, A REPRESENTATIVE IN CONGRESS FROM THE COMMONWEALTH OF PENNSYLVANIA**

Mr. PITTS. Thank you, Mr. Chairman. Thank you for holding this important hearing on the issues and the future of the Consumer Product Safety Commission.

I think we all agree that protecting consumers, especially children from unsafe products is a worthy goal of government regulation. In 2008, the House Representatives passed the Consumer Product Safety Improvement Act with the goal of improving the safety of products that children and parents use everyday. How-

ever, the implementation of this law has given me cause for concern. We have observed a number of unforeseen and negative consequences arise and that are now putting undo pressure on businesses and manufacturers here in the United States. These consequences are increasingly problematic, especially during tough economic times when we desperately need the jobs provided by businesses and manufacturers.

I received countless e-mails and phone calls and letters from businesses expressing the difficult and damaging affects this law is having on them. The CPSC needs the proper resources and the time and the flexibility to carry out the implementation of this law in a reasonable and thoughtful manner. I have grandchildren and I want to be sure their toys are safe. I don't want to weaken laws that ensure the products on the market are safe for all consumers but we need to do this in a way that is realistic, clear and fair and that is why I have joined many of my colleagues in co-sponsoring H.R. 1815. I believe this bill institutes the needed flexibility the Commission needs in order to respond to the concerns of businesses and industry.

I welcome Chairman Tenenbaum. I look forward to hearing your testimony and appreciate you coming here today, and I yield back.

Mr. RUSH. The Chair recognizes the gentleman from Iowa, Mr. Braley, for 2 minutes.

**OPENING STATEMENT OF HON. BRUCE L. BRALEY, A  
REPRESENTATIVE IN CONGRESS FROM THE STATE OF IOWA**

Mr. BRALEY. Thank you, Mr. Chairman, and, Chairman Tenenbaum, I think the most important component of your very impressive resume is your experience as an elementary school teacher because elementary school teachers use commonsense in enforcing the law of their classroom everyday. My mother has been teaching in Iowa for over 50 years and at the age of 80 she is still subbing so I have great respect for elementary school teachers.

But I want to focus on a couple of things that have not really been discussed here this morning and one is the point that you raised in your opening statement about the need for increased port monitoring. But underneath that there is a subtext that we rarely talk about and that is the incredible impact of foreign manufactured goods on the safety of consumers in this country. We have seen an incredible shift in consumer products that were manufactured in the United States that are now being made overseas. Most States have product liability laws that limit recovery in the chain for distribution to the manufacturer of those products if the manufacturer is subject to the jurisdiction of the courts and has not been declared insolvent. Anyone who ever tries to hold a Chinese manufacturer accountable to the jurisdiction of the courts in the State will tell you it is an immense challenge. In fact, many of these factories in China are de facto agents of the Chinese government and so the whole concept of accountability in U.S. courts is an enormous impediment to consumer safety. That is why the role of your agency is so critical and that is why the lack of enforcement on defective foreign products is one of the biggest challenges U.S. consumers face so I applaud your efforts to focus on this. We need to realize that many U.S. consumers are not being protected for the

injuries and deaths caused by foreign manufactured products and come up with a joint strategy to address those concerns.

On the issue of Chinese drywall, I inspected homes in Boynton Beach, Florida with defective Chinese drywall and came back here and was sick for the next 6 weeks. I saw with my own eyes the corrosive effect on metal that this drywall is having. I smelled the odors in these homes. It is an enormous crisis and it is just the tip of the iceberg of what is wrong with import monitoring in this country. We have a lot to do to improve the enforcement of the quality of goods coming into this country and I pledge my commitment to work with you and your office to make sure that we are doing a better job of protecting U.S. consumers.

And I yield back my time.

Mr. RUSH. The gentleman from Georgia, Mr. Barrow, is recognized for 2 minutes.

Mr. BARROW. I thank the Chairman.

In the interest of Chairman Tenenbaum's time, I will refrain from offering an opening statement but I cannot refrain from taking this opportunity to personally welcome you and congratulate you on your appointment. Our paths first met 5 years ago when I was seeking election to the House and our guest today was seeking election to the other body and all I can say is that the other body's great loss is the Consumer Product Safety Commission's great gain. You are certainly one of the best things to have come from South Carolina in a long, long time and on behalf of your kinfolk in Savannah, I personally congratulate you and welcome you to the committee and thank you for your service to our country.

With that, I yield back.

Mr. RUSH. The Chair now recognizes the gentlelady from Ohio, Ms. Sutton, for 2 minutes.

**OPENING STATEMENT OF HON. BETTY SUTTON, A  
REPRESENTATIVE IN CONGRESS FROM THE STATE OF OHIO**

Ms. SUTTON. Thank you, Chairman Rush, and thank you for holding today's important hearing on the Consumer Product Safety Commission.

I am pleased to welcome you, Chairman Tenenbaum. Congratulations on your confirmation. You have such an important role and responsibility as the head of the agency charged with protecting the public, especially children from unsafe and dangerous products and with your appointment I am starting to feel better already. I wish you the best of luck.

Consumer product safety is not an area that we can afford to ignore and last year I was proud when we passed the Consumer Product Safety Improvement Act. That law created basic safety standards for keeping toxic lead out of children's products. Manufacturers must affirmatively demonstrate that those products are safe. The Act also provides vital new resources and authority including the Import Safety Initiative which puts inspectors at key U.S. ports, because as we have heard here today, in recent years the relationship, and I know you are well aware of this, the relationship between our Nation's import safety crisis and our Nation's trade policy has become painfully obvious. As imports have continued to grow, 80 percent of all toys sold in the U.S. are imported

from China alone. Some manufacturers have shown a remarkable failure to adhere to basic safety standards. It is a national shame and embarrassment when companies and importers pay more attention to their costs than our safety and the safety of our children and our families. Product safety must be the primary focus. In 2007 and 2008, more than 37 million toys were recalled in the U.S. This year there have been 23 toy recalls issued affecting over 4 million toys and every single recalled toy was manufactured in China.

We have also seen reports of serious health problems in residents of homes containing imported Chinese drywall and in response I am pleased that the CPSC established a drywall task force working with other agencies to investigate the hazards of imported drywall. And I am very interested to see the results of the task force studies and see what we can do to ensure that things being imported into this country are safe for consumers in the United States.

I yield back.

Mr. RUSH. The Chair now recognizes the gentlelady from Colorado, Ms. DeGette, for 2 minutes.

**OPENING STATEMENT OF HON. DIANA DEGETTE, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF COLORADO**

Ms. DEGETTE. Thank you very much, Mr. Chairman.

I want to add my welcome to our new Commissioner and say hal-lelujah, we are glad you are here.

I have been working on this legislation for a long time. I was on the conference committee that after we passed the Act to try to bring it to the floor and I was really happy to work with my friends on the other side of the aisle, in particular Ranking Member Barton to come up with these compromises.

What I am now interested in is how the Consumer Product Safety Commission is going to implement these far-ranging provisions of the legislation. Some issues have come up as we are all aware since the enactment of the bill and one of the things I am interested to know, and I think Chairman Dingell and Chairman Waxman and others are interested as well, is can we fix these issues administratively? Do we need to amend the bill? What do we need to do, in particular, with ATVs and other consumer products?

I think though that the change that both the legislation and the new administration have brought to the agency are exciting. I think that we are going to be able to do a lot for the consumers of America and I am really proud to be a part of this process.

With that, Mr. Chairman, I will yield back.

Mr. RUSH. The Chair thanks the gentlelady.

It is now my pleasure and my privilege to recognize the Chairman of the U.S. Consumer Product Safety Commission and to extend to her the customary 5 minutes for the purposes of her opening statement but prior to her opening statement I would ask that she understand that it is now the practice of this subcommittee that you be sworn in before you issue your opening statement, and so would you stand and please raise your right hand.

[Witness sworn.]

Mr. RUSH. Her credentials have been well-established earlier in this hearing and now it is my pleasure to recognize you for 5 minutes for the purposes of opening statement.

**TESTIMONY OF INEZ MOORE TENENBAUM, CHAIRMAN,  
CONSUMER PRODUCT SAFETY COMMISSION**

Ms. TENENBAUM. Good morning, Chairman Rush, Ranking Member Radanovich and members of the Subcommittee on Commerce, Trade and Consumer Protection. I am pleased to be here today to talk about the current actions that we are taking at the U.S. Consumer Product Safety Commission to protect the safety of children and consumers as well as give you my vision of this agency.

Let me begin by saying that I am deeply honored to have the privilege of serving as Chairman at such an important time in the Commission's history. In my first two months leading the CPSC I have focused on three key goals, transparency and openness in those we service, a renewed focus on education and advocacy for all Americans, and firm but fair enforcement of the product safety laws and regulations. My top priority since assuming the Chair of the Commission has been meeting the statutory deadlines for rules and reports required by the CPSIA. Through the hard work of the CPSC staff, and I must say I have never met more dedicated, hard-working people than those people who serve at the Commission, I am pleased to announce that 12 substantive rules and policy guidance documents have been released since I was sworn in on June 23, 2009. In each of these proceedings I have directed the Commission staff to work closely with all impacted stakeholders to ensure that the rules that we implement remain true to the statutory intent of the CPSIA while minimizing undue burdens on small businesses and other stakeholders. As we move forward, I assure you this subcommittee that we will continue to solicit feedback from all involved parties and work to implement commonsense rules that are squarely focused on maximizing product safety and reducing administrative burdens.

Another key priority of mine is the rebuilding and revitalization of the CPSC's internal business processes. The Commission's information technology systems are truly the lifeblood of this agency. Sadly, these systems were neglected for far too long. Early today the Commission released a plan to Congress outlining phase one of our business process modernization initiative which is the implementation of a searchable product information database. By leveraging technology, the CPSC can take a proactive approach to protect public health and safety, and recognize emerging hazards more effectively.

Consumer education is another key mission and component of my tenure at the agency. Through network television appearances and newspaper interviews I have worked to reach millions of families with information about dangerous cribs, bassinets and window blinds, products that have killed young children. Last month the GAO released a report noting that the Commission could do a better job of reaching out to poor and minority communities that often do not receive critical consumer product safety information and, Chairman Rush, I know that this is a key priority of yours and I want to assure you that it is also a key priority of mine. To that

end, I have directed the Commission staff to expand our education and consumer outreach efforts to underserved Americans.

Later this month, the CPSC also plans to launch a social networking, social engagement program that will establish the CPSC's presence on various new media sites including Facebook, Twitter and YouTube. Through these efforts we can educate a greater number of consumers and save lives.

Increased oversight of the products coming through our ports is another key priority. The GAO recently released a study that audited and analyzed the agency's effort to police imports and prevent the entry of unsafe products into the U.S. market. I agree with all of these recommendations and I have directed the Commission staff to update agreements with the Customs and Border Protection to allow better information-sharing.

It is also critical for this agency to respond diligently to new and emerging product safety issues such as problems now being reported with certain types of imported drywall. The CPSC is vigorously pursuing its investigation of imported drywall that has been linked to the corrosion of metal components and possible health impacts by homeowners in a number of States, and I understand the personal hardships that this issue has caused impacted homeowners and want to assure the members of this subcommittee that effective and efficient completion of this investigation is a key priority of the CPSC and our Federal and State partners.

Finally, I want to say a few words about the importance of pool and spa safety. Ensuring the compliance with the Virginia Graeme Baker Pool and Spa Safety Act is a critical priority of mine. I am happy to share good news with the Congress today about what we found in the last few months. We have sent our field investigators out to inspect over 1200 pools and spas in 38 States as a part of a recently launched enforcement initiative and we have found that 80 to 90 percent of the pools and spas inspected were found to be compliant. This is very good news and means that the children will be safe when they go swimming. We are also working with the States Attorneys General to find out why the other 10 percent are not in compliance.

Chairman Rush and Ranking Member Radanovich, thank you again for allowing me the opportunity to update the subcommittee on my vision for the future of the Consumer Product Safety Commission. I believe that CPSC stands for safety, especially the safety of children, so with your support I intend to continue the transformation of this agency from what some have described as a teething tiger into the world's leading lion in consumer protection. Thank you and I look forward to answering your questions.

[The prepared statement of Ms. Tenenbaum follows:]



**Statement of  
Inez Tenenbaum  
Chairman  
U.S. Consumer Product Safety Commission**

**Before the Subcommittee on Commerce, Trade,  
and Consumer Protection**

**“The Consumer Product Safety Commission:  
Current Issues and a Vision for the Future”**

**September 10, 2009**

Good morning, Chairman Rush, Ranking Member Radanovich, and Members of the Subcommittee on Commerce, Trade, and Consumer Protection. I am pleased to be here today to inform you of the actions we are taking at the U.S. Consumer Product Safety Commission (CPSC) to protect the safety of children and consumers, as well as my vision for the future of this agency.

Let me begin by saying that I am deeply honored to have the privilege of serving as Chairman at such an important juncture in the Commission's history. I am also pleased to report to the Subcommittee that CPSC is an agency on the rise.

My desire to serve as Chairman was deeply influenced by my previous work as an elementary school teacher, a researcher dealing with consumer product safety issues in the South Carolina House of Representatives, and my service as South Carolina's State Superintendent of Education from 1999 to 2007.

In all of these positions, I focused on doing my utmost to protect the health and safety of children and families – and have made this approach a key focus of the CPSC's move to modernize and address new regulatory challenges.

It is no secret that the Consumer Product Safety Commission has faced numerous impediments in recent years. In 1981, the Commission had nearly 900 full-time employees. By 2008, that number had dropped to below 400. Similarly, years of budget cuts severely impacted the Commission's ability to modernize or, in some cases, even maintain its basic infrastructure.

Last year, this Subcommittee and the Congress as a whole recognized the need to reinvigorate the Consumer Product Safety Commission by passing the Consumer Product Safety Improvement Act of 2008 (CPSIA). Among other things, the CPSIA gave the Commission substantial new enforcement authority, authorized increased staffing, increased public disclosure of emerging product safety issues, and provided new mandatory standards for children's toys and juvenile products.

Mr. Chairman, I applaud your leadership and that of other members of this Subcommittee in crafting the CPSIA. The CPSIA recognizes many of the challenges this agency has faced over the years – and demands that we rebuild the Commission to adapt to an era of consumer products that come from all over the world, and the need to take proactive measures to protect consumers from new and emerging hazards.

In my first two months leading the CPSC, I have focused on three key goals: transparency and openness to those we serve; a renewed focus on education and advocacy to all American consumers; and fair, but firm enforcement of the product safety laws we oversee.

Today, I hope to provide a clear assessment of what the Commission has accomplished so far and my vision for the future.

### Implementation of the CPSIA

My top priority since assuming the Chair of the Commission has been meeting the statutory deadlines for rules and reports required by the CPSIA. Through the hard work of CPSC staff, I am pleased to announce that 12 substantive rules and policy guidance documents have been released since I was sworn in on June 23, 2009, including the following items:

- Proposed Rule for Registration of Durable Infant and Toddler Products: On June 29, 2009, the Commission issued proposed rules for consumer registration of durable infant and toddler products, as required by the Danny Keysar Child Product Safety Notification Act, Section 104(b) of the CPSIA.
- Tracking Label Guidance: On July 20, 2009, the Commission issued policy guidance for the tracking label requirement contained in Section 103 of the CPSIA. The policy guidance announced the Commission's interpretation of key features of the tracking label provision, and explained how the Commission would approach enforcement.
- Mandatory Toy Standards: On July 21, 2009, the Commission issued a Notice of Consultation, pursuant to Section 106(b) of the CPSIA, to solicit input from all stakeholders on the effectiveness of the current mandatory toy standard (ASTM F963), and possible ways in which this standard could be improved to further reduce the risk of injuries from toys.
- Lead Inaccessibility Rule: On August 10, 2009, the Commission issued a final rule explaining under what circumstances children's products may contain parts that exceed the Congressionally-mandated lead limits, and describing when those internal lead parts are inaccessible to children.
- Audits for Third-Party Testing Labs: On August 13, 2009, the Commission issued a proposed rule specifying audit requirements for third-party testing labs pursuant to Section 102 of the CPSIA.
- Phthalates Testing Guidance: On August 17, 2009, the Commission issued testing guidance for children's toys and child care articles. This testing guidance only requires testing on component parts likely to contain phthalates, and not the entire article. Comments received on this guidance will also be integrated into a Notice of Proposed Rulemaking on the issue.
- Lead Testing Component Exemptions: On August 26, 2009, the Commission issued a final rule on lead level determinations that exempts certain component parts, including dyed and undyed textiles, polyester, cotton and papers, inks and inaccessible bindings in books from third-party testing requirements.

- Civil Penalties Interpretative Rule: On September 1, 2009, the Commission issued an interim final rule providing notice of the increase in civil fines pursuant to Section 115 of the CPSIA, and provided guidance on how the Commission will now negotiate civil penalties.
- Durable Nursery Goods Rulemaking: On September 3, 2009, the Commission issued proposed rules for infant walkers and bath seats pursuant to the Danny Keysar Child Product Safety Notification Act, Section 104(b) of the CPSIA. Both proposed rules strengthen the existing voluntary standards for those products. In February 2010, the Commission will issue proposed rules for bassinets and toddler beds.

In each of these rulemaking proceedings, I have directed Commission staff to work closely with all impacted stakeholders to ensure that the rules we implement remain true to the statutory intent of the CPSIA, while also minimizing undue burdens on small businesses and other stakeholders.

In the near future, the Commission will publish additional rules clarifying the third-party testing process and the testing of component parts. As we move forward, I assure the Subcommittee that we will continue to solicit feedback from all involved parties, and work to implement common-sense rules that are squarely focused on maximizing product safety and reducing administrative burdens.

#### Rebuilding the CPSC's Internal Business Processes

The Commission's information technology systems are truly the lifeblood of this agency. Sadly, these systems were neglected for far too long. The result is a patchwork of systems that make it very difficult for CPSC staff to "connect the dots" between different incidents, identify patterns of defects, and respond quickly to emerging hazards. This has led to a situation where the Commission is constantly in the position of reacting to events – rather than receiving new hazard information and proactively targeting harmful products before they flow into the stream of commerce.

Congress recognized the critical need for infrastructure modernization in the CPSIA, and directed the Commission to upgrade its infrastructure and create a product incident database that is easily searchable by the public. In response to that mandate, the agency is developing a single, integrated web-based environment, the Risk Management System (RMS), and an associated public database that will allow access to consumer product safety information.

Earlier today, the Commission submitted a plan to Congress detailing Phase I of the modernization initiative, which is implementation of the searchable product information database required by Section 212 of the CPSIA by March 11, 2011. As detailed in the report, the new web portal will be specifically designed to be easily accessible and usable by all Americans. Furthermore, the Commission plans a major public awareness

campaign as the database is rolled out to ensure that all Americans are aware of the database, and its utility in ensuring the safety of consumers.

However, this initial phase of the RMS is only one component of the Commission's overall effort to improve its infrastructure. CPSC continues to look at its business processes in order to identify improvements that will provide the agency with the tools necessary for identification of emerging hazards, such as using predictive data-mining technologies to analyze the increasing amount of information the agency receives, and identifying emerging hazards in real-time.

It is impossible to understate the absolutely essential nature of these improvements and their ability to transform the way this agency receives, reviews, and acts on new and emerging threats. By forming partnerships with industry and government entities to expand import surveillance and data exchanges, greater consumer involvement through user-friendly reporting and search tools, and the use of new advanced information-management technologies, CPSC can take the truly proactive approaches necessary to protect public health and safety.

#### Consumer Education

Notice of recalls and other hazards are only effective when all impacted consumers actually hear about them and respond to our alerts. Through network television appearances and newspaper interviews, I have worked to reach millions of families with information about dangerous cribs, bassinets, and window blinds. These are products that have killed young children, and we are working tirelessly to inform parents and caregivers about recalled products that need to be removed from homes or repaired to keep kids safe.

Last month, the Government Accountability Office (GAO) released a report noting that the Commission could do a better job of reaching out to poor and minority communities that often do not receive critical consumer product safety information.

Chairman Rush, I know this is a key priority of yours and I want to assure you that it is also a key priority of mine. To that end, I have directed Commission staff to expand our education and consumer outreach efforts to underserved Americans.

One example of this is the Commission's effort to communicate with populations that are sometimes difficult to reach through traditional media. We are planning a "Minority Outreach Day" to increase awareness of product safety in certain targeted markets. We also have a successful grassroots program called the Neighborhood Safety Networks that has 5600 members who are community leaders and who pass on vital safety information to their constituents. These members include tribal leaders, fire chiefs, health care workers, and child safety advocates. We plan to expand this program and target our materials to specific hard-to-reach populations that the Neighborhood Safety Network aims to serve.

Later this month, CPSC also plans to launch a social networking, social engagement program that will establish CPSC's presence on various new media sites, including Facebook, Twitter, and YouTube. This is an exciting new effort that once launched will reach a great number of consumers who may not know about us right now, but will know about us soon.

#### Increased Port Monitoring

From 1998 to 2007, the value of consumer products imported into the United States increased over 100 percent. During that time period, imports from China nearly quadrupled – and now constitute over 40 percent of all imported consumer goods.

Pursuant to Section 225 of the CPSIA, the GAO recently released a study that audited and analyzed the agency's efforts to police imports, and prevent the entry of unsafe products into the U.S. market. In the report, the GAO found that increased agency staffing at ports, combined with revised information sharing agreements with U.S. Customs and Border Protection (CBP) would allow the agency to better detect faulty products before they enter the country – not after they enter the stream of commerce.

I agree with these recommendations, and have directed Commission staff to update agreements with CBP to allow better information sharing. This information sharing would include use of CBP's Automated Targeting System (ATS), which contains advance manifest information for shipments entering the United States.

To access the ATS information, the Commission is in the process of hiring an employee that will be resident in CBP's Commercial Targeting Analysis Center (CTAC) when it becomes operational on October 1, 2009. This employee will be able to provide CPSC with real-time advance cargo manifest information, and allow other CPSC staff to make cargo risk assessments as shipments arrive, not after they leave port areas.

#### Foreign Outreach

Since assuming the Chair of the Commission, I have made a number of efforts to reach out to foreign governments and manufacturers to inform them of new Commission regulations, and to emphasize this agency's commitment to ensuring the safety of imported consumer products.

In late July and early August, I traveled to Asia to meet with industry and government leaders in Hong Kong and Vietnam to discuss the CPSC's new priorities. I also gave a keynote speech at the APEC Conference in Singapore, where I stressed the importance of foreign manufacturer compliance with the CPSIA, the importance of foreign economies building safety into their products, and the relationship between trade and safety.

The Commission is also continuing its efforts to strengthen and deepen our work with the Chinese government and Chinese manufacturers. On October 21-26, 2009, the 3<sup>rd</sup> Biennial United States – China Consumer Product Safety Summit between the CPSC and

its Chinese counterpart agency, the General Administration of Quality Supervision, Inspection, and Quarantine (AQSIQ) will be held in Wuxi, Jinhua, and Beijing, China.

The goal of the 2009 Summit is to bring dialogue between the two agencies to a new level, emphasizing the need for commitment to a more comprehensive approach to product safety. With input from U.S. and Chinese stakeholders, CPSC and AQSIQ will identify and discuss measures to ensure that U.S. importers and Chinese suppliers establish a systemic approach to preventing and detecting safety hazards in consumer products – from product design, through the manufacturing process, and to ultimate use of the product by the consumer.

In addition to overarching policy discussions, the Summit agenda will include topical discussions of product safety issues, with toys, lead in children's products, all terrain vehicles (ATVs), lighters, and fireworks representing specific product areas where we hope to make systemic advances.

In the coming months, we will continue our outreach efforts with representatives from other foreign governments to ensure that all manufacturers importing products into the United States are aware of the existing CPSC regulations, as well as new requirements that will soon be promulgated pursuant to the CPSIA. We will also be working closely with the U.S. Department of State, pursuant to new authorities under the CPSIA, to develop an information sharing agreement with foreign governments as we investigate mutual product safety concerns, and begin to pursue joint enforcement activities.

#### Chinese Drywall Investigation

CPSC continues to vigorously pursue its investigation of imported drywall that has been linked to corrosion of metal components and possible health impacts by homeowners in a number of states. We are fully committed to finding answers and solutions for all the homeowners who are impacted by this serious situation – and the agency is pouring a record amount of money and manpower toward the goal of helping affected families.

As of September 4, 2009, the Commission had received 1192 incident reports relating to drywall in 24 states and the District of Columbia. The majority of these reports continue to be from Florida, Louisiana and Virginia.

In order to provide a comprehensive response to this issue, the Commission has formed an internal drywall task force that works with other federal and state agencies, including the Environmental Protection Agency (EPA), the Centers for Disease Control (CDC), the Department of Housing and Urban Development (HUD), Immigration and Customs Enforcement (ICE), and several state health departments.

In the last month, the CPSC drywall task force has:

- Made an investigative visit to China to meet with government and industry officials, and collected information and samples relevant to the Chinese drywall manufacturing process;
- Conducted principal air sampling field work in 50 homes to determine the air emissions in homes with suspect drywall;
- Sent over 100 letters to drywall importers, distributors, and builders to determine how much drywall may be at issue and in what homes it may have been used;
- Contacted over 500 consumers to request that they update the information provided in initial drywall incident reports; and
- Coordinated a rapid response to allegations of radioactive phosphogypsum in Chinese drywall. Upon learning of the allegations, we commissioned a study with our state and federal partners, validated the science with an interagency technical committee, and publicized results that the samples tested did not pose a radiological hazard.

Later this fall, the federal drywall task force plans to release initial indoor air sampling test results, drywall elemental analysis results, chamber study results, and a preliminary health assessment – and will continue to diligently work on efforts to reach further conclusions on the exact source of contamination in the affected homes. The Commission is also studying the remediation activities of certain builders in an effort to assist its federal and state partners in developing a remediation protocol for impacted homes. Further detail on the federal testing efforts and associated activities is available in our September Drywall Investigation Status Report.

I understand the personal hardship that this issue has caused impacted homeowners, and want to reassure members of the Subcommittee that effective and efficient completion of this investigation is a key priority for the CPSC and our federal and state partners.

#### Pool and Spa Safety

In 2007, Congress passed the Virginia Graeme Baker Pool and Spa Safety Act in response to a series of horrible child injuries and fatalities involving drain entrapments and drownings in pools and spas. CPSC has worked with the Baker family and Taylor family and is pouring its heart and energy into effectively implementing and enforcing this safety law – this is our way of honoring the children who have died or been seriously injured in pools and spas.

Ensuring compliance with this law is a critical priority for me. In the last several months, CPSC has ramped up its outreach and education efforts to ensure that public swimming pool and spa operators are compliant with the law. In July, I conducted an

extensive interview with NBC's *Today Show* to re-state the need for compliance, and warn public pool operators that they should close their facility if they are not in compliance with the law. In addition, CPSC investigators have inspected over 1200 pools and spas in 38 states as part of a recently launched enforcement initiative.

The good news is that CPSC's public outreach and education efforts seem to be having a positive impact in this area. Recent inspections show that most public pools and spas have installed or have plans to install the new, compliant drains covers and safety equipment in the near future. Let me state again, contrary to some reports, there are many more public pools and spas that have been made safer because of this important law.

As we approach the end of the summer swimming season, CPSC will continue to work with state Attorneys General, state health departments, and consumer groups to ensure that public pools are in compliance with this important law – and will not hesitate to take action against those that are not.

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Chairman Rush and Ranking Member Radanovich, thank you again for allowing me the opportunity to update the Subcommittee on my vision for the future of the Consumer Product Safety Commission. I believe that CPSC Stands For Safety, especially the safety of children.

With your support, I intend to continue the transformation of this agency from what some have described as a "teething tiger" to the world's leading lion of consumer protection.

I now look forward to answering your questions.

Mr. RUSH. The Chair thanks the Chairman.

Before we engage in the questioning from the members of the subcommittee, the Chair requests unanimous consent that letters from five consumer groups and a letter that was sent to me through the offices of Congressman Schauer of Michigan, that these letters be entered into the record. Without any objections or hearing no objections, so ordered.

[The information appears at the conclusion of the record.]

Mr. RUSH. Do you want to report unanimous consent requests at this time?

Mr. RADANOVICH. I would. Thank you, Mr. Chairman. I have got a couple of unanimous consent requests, statements on behalf of Congressman Gingrey and Burgess and also letters from constituents, over 100 here of constituent companies, small businesses that are impacted by the effects of CPSIA, of this legislation. I would ask that all three of these items be accepted into the record.

Mr. RUSH. Hearing no objections, so ordered.

[The information appears at the conclusion of the hearing.]

Mr. RUSH. The Chair recognizes himself for 5 minutes for the purposes of questioning the witness.

Madam Chairman, last year the CPSC requested \$8 million for fiscal year 2009 as part of its performance budget statement to the Congress and that request has funded 444 full-time employees which is an increase of 24 over the full-time employee staffing level for '08, and my question is how many of these additional employees have been hired by the agency? Do you seem to need additional employees and are any of those funds still going to CPSC's enhancements in import safety and product testing capabilities? What proportion of the FTE's and of your budget will go to each category and what other roles do you anticipate the needs FTE will play under your administration?

Ms. TENENBAUM. Thank you, Mr. Chairman. The CPSC has a staffing level of 530 FTEs. We are currently at 458 employees at the agency. We have 18 pending hires that have accepted offers for employment and we have 36 full-time employees that we have hired since January, 2009. We have 29 vacancies where interviews are currently underway and 27 other positions are in the stages of the recruitment process. We hope by October to reach the ceiling of 530 employees so that we will be fully staffed and we will be putting additional staff in port security and surveillance as well as compliance, and throughout the agency to see that we implement the CPSIA and other statutes. I can give you the breakdown for every division and how many will be added to those divisions. I can send it over but I did not bring it with me today.

Mr. RUSH. Would you please supply that?

Ms. TENENBAUM. We will get that to you but we are hoping by October we will meet the ceiling of 530 which is the maximum FTEs that we are supposed to have.

Mr. RUSH. Can you—the GAO's report on improving safety for minority children and families as you indicated was a major concern of mine and I know from your previous statements that you have committed to reversing or to improving the patterns of safety for minority children and families. Can you expound a little bit more on some of your priorities in that particular area, please?

Ms. TENENBAUM. Well, we found that overall the Commission needs to improve our ability to educate consumers. There is nothing more disheartening and sad than to find out that products that were recalled several years ago are resulting in injury and deaths, and we have found that recently we had to go back and reissue press releases, and we did this recently on bassinets but so that is why we want to step it up. We have a CPSC 2.0 where we are going to be using new media as others are to get the messages out. We also want to focus in the minority outreach of looking at how we can enhance our ability to talk directly with minority organizations. We welcomed the recommendation of the GAO and information that we hope, we think we need to have and the other thing is just the information efforts, not only to consumers as a whole but targeting minorities. We believe that a child's economic background should not affect the risk of injury. Now, we will be leading a minority outreach day to increase awareness in product safety in targeted markets which will be a media event and working with organizations, and then we also work with the Neighborhood Safety Network members, and these are several hundred organizations where we can get information to them and they disseminate it to other minority organizations. We are going to report to you at the end of October on the GAO report so we will address that in detail in our report to you in October.

Mr. RUSH. My time has expired. I want to thank you for your responses to my questions.

The Chair recognizes Mr. Radanovich for 5 minutes.

Mr. RADANOVICH. Thank you, Mr. Chairman, and welcome, Chairman Tenenbaum, to the committee and I enjoyed our getting a chance to know each other and appreciate your outreach and welcome you to the Commission.

I want to just highlight a couple—I have got a couple of items in the committee room here to kind of highlight some of the problems that CPSIA seems to have with small business and there is a couple of products over there that cost \$65, a microscope for \$60 and testing for those products for the microscope is \$3,678 for—that was for one of 24 samples that were submitted, and the other one was \$5,973. But I think the item that represents problems with small business the most is this Native American ceremonial costume that was created in the Southwest somewhere. Recently my family and I came across the country, California to Washington, D.C. in a cross-country trip this August and there were a lot of vendors at the reservations and such that were making a living by selling similar costumes like this, and many of these have beads or special designs that make each one of them individual. None of them are made the same and this poses a real problem because under CPSIA this would have to be—one costume at a time would have to be tested and you would be destroying the costume at the time that it is testing so it is really a small batch run product problem with CPSIA, and I think this item highlights the problem the most. Now, products like this were especially with crystal beads and such that folks had a problem with and they submitted a request to exclude crystal and glass beads from the lead provisions in CPSIA and it was denied, and I want to read if I can your comment on the denial of the request. It said, “In making a determina-

tion, I was mindful that the statute does not use the term harmful amount which would allow staff to utilize a risk-based approach. Thus, while Commission staff recognized that most crystal and glass beads do not appear to pose a serious health risk to children, the request for the exclusion must be denied.”

So I guess I have a couple of questions that kind of revolve around this problem of small batch testing and the crystal and glass bead exclusion from the lead provisions. Do you think the Commission has the flexibility to exempt safe products that don't meet the exemption standard or is it virtually impossible under the standard of any lead absorption for most products and materials?

Ms. TENENBAUM. I appreciate your question, Ranking Member Radanovich, because I think there has been some interpretation of my comments that have muddied the waters around this issue so I appreciate the opportunity to comment. You did read the section of my comments that have people wondering were the crystals—did they pose no hazard at all to children. And I met with the staff yesterday to make sure that I understand and it was really, I guess, poorly worded that part of my statement and what the staff meant when they—and I was taking it from their memorandum, was that under the Federal Hazardous Substance Act which was the old Act. The Act that we enforced and continue to but before it was amended by the CPSIA, that CPSC had to determine whether a product can contain lead and it resulted in substantial illness or injury. So before you could regulate the lead content, you had to prove that there was substantial illness or injury. When you passed the CPSIA, we were not required to prove that standard, in fact, Congress struggled over where to set the lead limits and you determined that there was no safe level of lead based on testimony and, you know, Congress did.

Mr. RADANOVICH. Which did not allow you to do any risk-based assessment of any of the products?

Ms. TENENBAUM. Well, going back to the lead crystals, Congress has set the threshold after August 14 of this year to be 300 parts per million. These lead crystal beads were 900 parts per million up to 23,000 parts per million per bead so I think it was poorly worded.

Mr. RADANOVICH. But during the conversation too, it was known that the lead in those beads were not in a form that was going to cause a problem even if they were ingested and I think that is where the devil is in the detail of a lot of this. Some of those beads would have to be crushed up into powder and then swallowed in order to have the adverse affect of the lead which makes me think that the Commission needs some type of some ability to test things on a risk-based assessment. And I guess what I think I would like to get an answer from is do you think that products that are excluded such as crystal present an unreasonable risk of injury or are unsafe and do you need flexibility to grant permission exemptions to permit safe products that can't meet the statutory limit?

Ms. TENENBAUM. Well, in the lead we showed that there was some leaching but it did not rise to the level with one bead to oppose to be listed under the Federal Hazardous Substance Act.

Mr. RADANOVICH. But then that doesn't give you—but you don't have any flexibility to exempt that?

Ms. TENENBAUM. But what if the child swallowed 50 small beads, we could not determine whether or not one, you know, one bead. It was determined we would not put one bead on the Federal Hazardous Substance Act but what if a child swallowed multiple beads and it would have raised the blood level.

Mr. RADANOVICH. And if I may get you to answer this one last question though, do you need flexibility to grant exemptions to permit safe products that can't meet the statutory limit?

Ms. TENENBAUM. Well, it goes to the heart of the matter on what is a safe level for lead and Congress struggled with it.

Mr. RADANOVICH. But do you feel you need that flexibility so that you can exempt safe products?

Ms. TENENBAUM. I feel it would be premature for me to answer that question at this time because these beads went all the way up to 23,000 parts per million.

Mr. RADANOVICH. Well, let us just in all products, do you need in any case do you feel that you need the flexibility to grant exemptions for safe products?

Ms. TENENBAUM. I believe that we have to look at products on a case-by-case basis and with good science wedded with a good statute determine whether or not it is at risk.

Mr. RUSH. The gentleman's time has expired.

Ms. TENENBAUM. So I think it is premature for me to say when Congress struggled with this very issue it was the heart of the CPSIA lead limits and Congress collectively decided and overwhelmingly passed a statute that said we will have any lead—we will not allow a product that had any lead.

Mr. RADANOVICH. Even if those products are safe.

Mr. RUSH. The Chair has been very lenient with the gentleman.

Mr. RADANOVICH. Thank you, Mr. Chairman.

Ms. TENENBAUM. Thank you. That's the heart of the matter really.

Mr. RUSH. The Chair now recognizes the Chairman Emeritus for 5 minutes for questioning the witness.

Mr. DINGELL. Mr. Chairman, I thank you.

On March 4, 2009, I sent a letter to CPSC with 10 detailed questions concerning implementation of the Consumer Product Safety Improvement Act, the CPSIA. I would ask unanimous consent that that be inserted in the record at this time, Mr. Chairman.

Mr. RUSH. Hearing no objection, so ordered.

[The information appears at the conclusion of the hearing.]

Mr. DINGELL. At the request or rather at the instruction of former Chairman Nord, CPSC prepared responses to the questions which I ask unanimous consent be inserted into the record at this point.

Mr. RUSH. Hearing no objections, so ordered.

[The information appears at the conclusion of the hearing.]

Mr. DINGELL. Those responses indicated support for amendment of the statute, "in order to allow CPSC to set risk-based priorities given the finite resources available to it." I would appreciate now your candid responses to the following questions in order to ascertain whether you support such course of action or how we should address the problems that the Commission has with the implementation of that statute. As my time is limited, Madam Chairman, I

ask that you respond to these questions with a yes or no. I will note that I will submit these and other questions for the record in order to allow you to provide more detailed answer.

First question, given widespread concern about the practicality of retroactively applying CPSIA's requirement to existing inventory, do you believe that the applicability of such requirements should instead be limited to products manufactured after the effective date of the statute except in circumstances where the Commission decides that the exposure to a product presents a health and safety risk to children, yes or no?

Ms. TENENBAUM. Well, I would have to say no. The Federal Court decided in the phthalate case that we could not exempt products that were manufactured before the statute was passed.

Mr. DINGELL. Thank you, Madam Chairman.

Next question, I am concerned that the age limit for children's products defined in CPSIA unnecessarily subject certain products such as bicycles or books or magazines to more rigorous standards than otherwise necessary. Do you believe the age limit used in the definition of children's products should be lowered to better reflect exposure, yes or no?

Ms. TENENBAUM. No, because you often have a home where multiple children are at all ages using the same product.

Mr. DINGELL. Now, do you believe that CPSC should be given the discretion to set a further age or rather to set a higher age for certain materials or classes of products that pose a risk to older children or to younger ones in the same household, yes or no?

Ms. TENENBAUM. I think I answered that in number two that we need to.

Mr. DINGELL. Do you mean the same no answer, Madam Chairman?

Ms. TENENBAUM. Right, no.

Mr. DINGELL. Thank you. I hope you understand this is not an attempt on my part to be discourteous but I have a lot to get in here and I am much concerned about that the fact the time is running very fast.

I am also concerned that the blanket applicability to products of certification tracking label requirements would be unduly cumbersome, both from the standpoint of CPSC and consumer product manufacturers. Should CPSC be allowed to address certification tracking labels and other issues on a product class or other logical basis using risk assessment methodologies to establish needs, priorities and a phase-in schedule, yes or no?

Ms. TENENBAUM. It depends on the individual product. We have to look at it product by product.

Mr. DINGELL. I am going to ask that you will have time to respond further to these questions and I will be submitting additional questions to you as Chairman of the Commission.

Do you believe the implementation of CPSIA has overstretched CPSC's staff and resources, yes or no?

Ms. TENENBAUM. It has but they are hardworking and our staff is working until midnight many nights. Many worked the 4th of July. They are working many weekends to work out to get these rules finished so that you can have it.

Mr. DINGELL. Madam Chairman, thank you. I have a couple more questions here.

Put differently, does CPSC have adequate resources with which to implement CPSIA as well as to carry out its other mandates, yes or no?

Ms. TENENBAUM. No.

Mr. DINGELL. I am sorry?

Ms. TENENBAUM. No, we don't have adequate resources but we are working hard to do the best we can.

Mr. DINGELL. If not, what amount of funding would you suggest be given to CPSC to allow it to perform its functions satisfactorily?

Ms. TENENBAUM. Well, we are not—we submitted our budget to OMB and we cannot discuss it until September the 14th, I understand, publicly.

Mr. DINGELL. Well, we do need the answer to that question for us to see that you can function. This committee has legislative jurisdiction over these matters and OMB lacks that jurisdiction.

Ms. TENENBAUM. Well, we can give it to you on September the 14th.

Mr. DINGELL. Remember that difficult fact so I am asking that you submit that to us for the record.

Ms. TENENBAUM. Thank you.

Mr. DINGELL. Madam Chairman, in conclusion, do you believe that the problems encountered in implementing CPSIA can be remedied solely via administrative action by CPSC, yes or no?

Ms. TENENBAUM. I would say most of them can by administrative action.

Mr. DINGELL. Most, so that means some cannot?

Ms. TENENBAUM. There will be some areas where we still have not come up with a solution.

Mr. DINGELL. I will be asking further information so as you can identify that. Now, if not, do you support targeted amendments to CPSIA to address the concerns which have arisen during the Act's implementation, yes or no?

Ms. TENENBAUM. It is premature for me to answer that. We are working with all of the industries that are affected and trying to untangle the knots that they have with their products and we are making great progress in resolving many of these issues.

Mr. DINGELL. So you are telling me that such cut and bite amendments carefully targeted to CPSIA may be required?

Ms. TENENBAUM. I said it is premature for me to answer that.

Mr. DINGELL. I said may, I didn't say will be.

Ms. TENENBAUM. May be required, may.

Mr. DINGELL. OK, now, if they are required will you first tell the committee whether they are required or not and second of all, will you work with us if such are required?

Ms. TENENBAUM. Absolutely, 100 percent.

Mr. DINGELL. OK, now, when will you know whether these amendments, carefully targeted will be required?

Ms. TENENBAUM. Well, there is one rule that we are working on and once it—it is called the—it contains the component part testing rule that many of these issues dealing with handcrafters and other products will be—will find out that under the component part they will not have to test. For example, a shirt that falls under deter-

minations rule, it is cotton so you don't have to test a cotton shirt but the buttons, if you have the button manufacturer certify to you that the button does not contain lead then the whole product would not have to be tested and we feel like that is going to untangle a lot of knots.

Mr. DINGELL. All right, let me try to just—do you have problems in involving a rule with regard to bicycles, off-road vehicles and things of that kind, right?

Ms. TENENBAUM. Well, I met recently.

Mr. DINGELL. Just yes or no.

Ms. TENENBAUM. We are—if you will let me explain on the ATVs, we met with the industry.

Mr. DINGELL. My time is about gone and the Chairman is kindly permitting me.

Ms. TENENBAUM. There are issues that we are working with administratively with both industries.

Mr. DINGELL. Say it again.

Ms. TENENBAUM. It has a stay right now on both the bikes and the ATVs and we are working with them on how they can make the lead inaccessible in the parts that the rider comes in contact with, like the handlebars. You know, I looked at my bicycle. It has rubber around it so I don't come in contact with that.

Mr. DINGELL. So you have a problem that you can't solve very quickly, can you?

Ms. TENENBAUM. Yes, we can once we determine that they can make those parts inaccessible.

Mr. DINGELL. Now, you have got a fine problem on motorcycles?

Ms. TENENBAUM. Motorcycles has the issue of lead in the handlebars. There might be lead in the vinyl seats but the motorcycle might not be a children's product.

Mr. DINGELL. OK and you have got a similar problem on all terrain vehicles and snowmobiles and such?

Ms. TENENBAUM. There are issues there in implementation and we are working with the industry and met with them last week.

Mr. DINGELL. And you have got a problem with regard to lead in publications, periodicals, books, children and adult books, is that right?

Ms. TENENBAUM. Well, no we don't.

Mr. DINGELL. No you don't?

Ms. TENENBAUM. This is a book.

Mr. DINGELL. Why is it that the book publishers are calling and telling me so?

Ms. TENENBAUM. Because, you know, it would be nice if we could and I want to—offering to meet publicly with affected industries which we are doing, holding public hearings which I want to do. We are resolving many of these issues. The ordinary book like this book will contain no lead. It is pictures. It is printed with a four-color process. This book complies and the reason we have it covered is because—

Mr. DINGELL. But you have books out there that do not comply, is that right?

Ms. TENENBAUM. The only books that don't comply are books that are published prior to 1985 which we don't consider children's books. These are vintage books that will be considered adult vin-

tage books even if they are for children and those books the only ones that don't comply are those that have illustrations using color.

Mr. DINGELL. Madam Chairman, I see that my time has been exceeded.

Ms. TENENBAUM. Now, the other thing about the books.

Mr. DINGELL. What I want you to understand is that this committee wants to see to it that you have a statute that you can properly administer without a lot of toe-dancing and improper pressure placed upon you to resolve questions in a way which are inconsistent with the statute.

Mr. Chairman, I will ask unanimous consent that I be permitted to submit a further letter and information to the record and responses by the Chairman to get to the bottom of these questions that I am trying to answer.

Mr. RUSH. Hearing no objection, so ordered and the Chair wants the Chairman Emeritus to know that you are in the thereabout area of 5 minutes.

Mr. DINGELL. You have been excessively kind and courteous. I give you my respect and thanks.

Mr. RUSH. Well, the Chair has a deep-seeded love for the Chairman Emeritus.

The Chair now recognizes the gentleman from Louisiana, Mr. Scalise, for 2 minutes.

Mr. SCALISE. Thank you, Mr. Chairman.

Madam Chair, on the question of Chinese drywall, looking through your opening statements there are a few questions, one that you had cited that your office has 1,192 incident reports on this issue. Do you know how many of those are from Louisiana?

Ms. TENENBAUM. Well, most of the drywall problems are from Florida, Louisiana and Virginia and so a great number of those are from Louisiana, and we realize that this is a serious problem for your constituents.

Mr. SCALISE. And of course with all of the rebuilding that occurred after Hurricanes Katrina and Rita, our offices all throughout our delegation continue to receive more complaints and serious problems and I know some of my other colleagues from other States have expressed similar things they are experiencing in their State but just, I guess, because of the high number of homes that have been rebuilt and obviously some of this toxic Chinese drywall was used in many of these homes, we continue to receive higher numbers. Have you talked to our State's Department of Health and Hospitals to see if—I don't know if maybe some people might have reported incidents to them that didn't find their way to your office to make sure that the numbers and the incidents that have been reported are accurately being delivered over to your office in the cases where the State knows about an incident in our State?

Ms. TENENBAUM. We are working with our State partners, with your State health departments and we are also working with our Federal partners, the CDC, HUD, EPA and the White House Domestic Policy Council to get as much information as possible.

Mr. SCALISE. OK, I understand your task force on this issue is going to be issuing a report it says sometime in the fall. Do you know roughly when that report will be issued?

Ms. TENENBAUM. We are trying to issue this in late October and the report will have the EPA pilot study of six homes, the indoor test study, the EPA's elemental analysis of drywall which breaks down all the account compounds in the drywall. We also have been working on a phase two chamber test with the Lawrence Berkeley National Laboratory and a 50-home indoor air quality test program that is conducted by a private company, the Environmental Health and Engineering Company.

Mr. SCALISE. Is that report going to look into how this tainted drywall actually came into our country? What steps were maybe—what things were missed that allowed it to come in?

Ms. TENENBAUM. Well, we sent a team over to China and our team from the CPSC visited six mines and received samples to come back and we are using them in the testing. We are tracking distribution of drywall in the United States and what we have done is written letters to numerous importers, builders, companies that sell drywall. One of the issues that I have found is that the drywall standards only address the structural integrity and did not address what goes in the content.

Mr. SCALISE. The toxic levels, potentially.

Ms. TENENBAUM. So that is one of the things that I want to do is to create a standard for drywall so we would have a universal standard of products that can go into drywall.

Mr. SCALISE. And I would look forward to working with you on that. And final question, you had mentioned in your testimony that over 500 consumers were asked by your office to update their information on their incident reports. What types of things did they, you know, was it maybe that they didn't fill out all the things you wanted or there was additional information you wanted? What types of things did those?

Ms. TENENBAUM. Do you mean on the drywall?

Mr. SCALISE. Yes.

Ms. TENENBAUM. Well, they have just had new information about how it is affecting them physically. There are two tracks in this. One is to look at is this drywall—are these problems of drywall causing these health problems, these respiratory problems? And then is the drywall corroding electrical wires and so we are looking at that and they probably—I can get you a summary of what the complaints were or what the information is.

Mr. SCALISE. Sure, I appreciate that.

And thank you, Mr. Chairman, for your latitude.

Mr. RUSH. The Chair would like to announce that there are votes occurring on the floor and I am not sure exactly how much time is left but it is the Chairman's intention to go vote and allow members to go and vote and then to return for the continuance of this hearing. So we will be coming back but the Chair wants to recognize the gentlelady from Florida for her 2 minutes prior to us going to vote.

Ms. CASTOR. Thank you, Mr. Chairman.

I will stick on Chinese drywall and I appreciate the seriousness with which the Consumer Product Safety Commission has undertaken the investigation and as you know, importation of Chinese drywall spiked dramatically a few years ago. In 2005, we imported \$3.6 billion worth. In 2006, that spiked to over \$32 billion worth

before dropping back down to \$6 billion. When that kind of massive spike occurs in trade for product that could potentially cause problems, does that raise a red flag for the CPSC that maybe we should take a closer look? And during your investigation have you considered an interim ban on Chinese drywall? And finally, there have been a number of proposals in the Congress and I would ask you to please review those and get back to us on what you recommend. Will you wait for the results of the investigation and tell me again what the timeframe is for that?

Ms. TENENBAUM. OK, thank you for those questions and we understand from Florida that you are getting many constituent letters and that you are very concerned about the quality of life for the people who live in your district and we are too. We want you to know that.

There are 6.9 million piece of drywall imported from China in 2006, there were—so 6.9 million pieces coming from all over the country. We have not been—from different sources with different manufacturers and which poses a different issue for the CPSC. It is not like you find one product that doesn't comply and can ban all products. There were some pieces of drywall from China that did comply and didn't have this problem and other pieces did. The report that we will give you in late October will be studies of in-home, the chamber test as well as we take the drywall out of the home and take it to a chamber so we can test the emissions from that drywall. There will be in-air quality tests, in-home air quality tests and there will be elemental tests where the EPA is breaking down the elements to tell us what is in there that is causing the corrosion and the respiratory problems. So we hope that this yields more information on the drywall. Practically speaking about a ban on drywall is very—the market has taken care of that because very few people want Chinese drywall and therefore we see very little coming into the country at this point. And so that is where but the overwhelming amount of drywall had been coming from China and now we get notification from the ports if drywall is sent to the port but very little is coming in at this time. We have met with our counterpart, the Chinese counterpart, AQSIQ. China has sent experts in to visit homes. They sent two of their drywall experts to look at—to go into these homes that were contaminated. As I said, we sent a team to China. Senator Bill Nelson from Florida went and met with the AQSIQ several weeks ago. He told them that President Obama was going to, he hoped, mention that when he met with President Hu in China. And so it is—we are really putting a great deal of our resources and attention on this, probably more than any other issue we are working on at this time is focusing on drywall so that we can find an answer to it, and so after we find an answer to on into rulemaking so that we can not have this situation happen again.

Mr. RUSH. The committee stands in recess and there are approximately four votes on the floor which are the final votes for the week but we will reconvene 15 minutes after the last vote and the Chair really wants to thank Chairman Tenenbaum for her contribution to this. Thank you.

Ms. TENENBAUM. Thank you.

[Recess.]

Mr. RUSH. Committee will again come to order. I will once again repeat to you, Madam Chair, for your graciousness and for the time that you are spending with us this afternoon. I don't see any other members here so I am going to recognize myself for one additional question and I think the ranking member has one additional question and then we will-if there are no other members we will just adjourn and go that way.

Every year for many years we have seen numerous bills that have addressed specific product safety issues. These bills have continued to be introduced even after the passage of last year's product safety reform. Just this year there are bills in Congress to permit sales to children to stop the sale of dangerous toy cigarette lighters and even to address additional national health threats, such as the beforehand reported upon Chinese drywall. The question is why are we seeing these bills? Why is the Commission not addressing these issues as they arise under its own authority and on its own initiative? And the second question is, do you agree that the consistent introduction of these bills is evidence that the Commission is not fully and properly carrying out its mission and how do you see us moving forward? Is the introduction of these bills, are they any kind of indication of a need or specific focus of the Commission or are they just members introducing bills?

Ms. TENENBAUM. Thank you, Mr. Chairman, and what you are asking me is how can the CPSC be proactive in spotting hazards so that Congress does not have to introduce bills, and do we have the administrative and regulatory structure where we can handle them without legislation. I appreciate this question because it is a good one.

First of all, as I have looked back in the history of the CPSC the leadership makes a tremendous difference because, you know, this Commission relies on voluntary standards, and it is a question of when you see a voluntary standard not working to protect the health and safety of individuals whether you move right in and go ahead and promulgate a mandatory rule. One of the things that I have observed as the Chairman for less than 3 months is that we need to review our existing emerging hazards and early warning identification system and we really need to bolster this system with technology and resources, and our new technology database will give us more information than ever before so that we can spot these issues earlier. We need to initiate more investigations and increase our investigations and be much more proactive about them.

There are also scientific research organizations where if we had the resources, we could engage them or even they could use private resources to do analysis and testing if we asked them to. We have a deference toward voluntary standards. In fact, the law was passed in 1981 requiring deference to voluntary standards unless they are proved ineffective in addressing the hazards. I have already noticed in my short tenure that there is one particular product that I have seen that there are no standards for yet we have already determined 60 people have been killed by this product and we are going ahead and announced proposed rulemaking, ANPR, so that we will begin working on a standard and not just wait until the industry comes up with a voluntary standard.

So all of these are ways that the CSPC will be more proactive and we also want to harness the new media opportunities that we have. Our new brand is CPSC 2.0 with the blog, the Facebook, the YouTube, Twitter, Recall Widget so consumers have up-to-date information. It is really going to be interesting with the new—we have the tracking labels which we went back to the statute and wrote a tracking label guidance but industry is looking at a futuristic tracking label so you could look at this bar code that would be universal throughout the world and pull it up on say your Blackberry or iPhone and find out everything about this product right there in the store or, you know, when you by looking at the bar code, and so very few people are using it. It is very futuristic but that is the kind of technology that will enable us to be more proactive.

Mr. RUSH. The Chair recognizes the ranking member, Mr. Radanovich.

Mr. RADANOVICH. Thank you, Mr. Chairman. I appreciate that.

Madam Chair, I want to know what the purpose of a testing and certification stay of enforcement is and what happens when the stay expires in February? Do you think that the Commission will be ready to implement the laws as written?

Ms. TENENBAUM. Thank you, Ranking Member Radanovich.

First of all, we call that the 15-month rule and that we were required by statute to have that month which will be what is reasonable testing and it will have the component part testing in that rule, and it is due to be promulgated in November, and so under the statute we will be working trying to get that out because I guess what I wanted to say here this morning and what we have prepared to try to leave in your minds is that we are working hard to implement the CPSIA. We are finding out that with every rule that we put out like the lead determinations which probably would have exempted the blouse that you showed us from any testing, the component testing which will exempt so many products from the manufacturing having to retest again on items, all of these are helping us resolve a lot of these questions and untie a lot of these knots. And so we will be having that rule shortly and I think that it will help tremendously with a lot of the complaints that you are receiving from industry.

Mr. RADANOVICH. Do you think that you will be able to implement and enforce the law as written by then in February?

Ms. TENENBAUM. Well, we think that after the stay of enforcement expires, we will have all the rules in place and the stay was necessary the leadership at the Commission felt at that time because there was so much rulemaking to do. We had not even approved all the third-party laboratories. The law says that manufacturers and private labelers have to have their children's products tested by a third-party laboratory.

Mr. RADANOVICH. Right, right.

Ms. TENENBAUM. And we had to approve all these laboratories and so to date we have approved 190 laboratories in 27 countries. So now industry has a place to go to get their products tested. So we think that when the stay expires, that we will have these rules in place and that we will be able to untie a lot of these problems

that industry has. That is why I said it was premature today then for me to—

Mr. RADANOVICH. Forgive me though, I am sorry. I just don't have enough time here.

Ms. TENENBAUM. I know. I am taking your time.

Mr. RADANOVICH. But do you think that—will you be able to grant exemptions under CPSIA during—after that stay or do you think that you will have to post another stay?

Ms. TENENBAUM. We are hoping that we won't have to post another stay.

Mr. RADANOVICH. If you do, won't that be evidence of the need for statutory change in CPSIA in order for you to get all this done and be able to grant exemptions?

Ms. TENENBAUM. Well, we believe that if we in good faith implement all the regulations that CPSIA requires that most of these issues can be resolved administratively.

Mr. RADANOVICH. All right.

Thank you, Mr. Chairman.

Ms. TENENBAUM. Either through the product not containing lead or not being a product that will ever contain lead like cotton or paper or certain kinds of ink used in printing.

Mr. RADANOVICH. Thank you, Mr. Chairman.

Mr. RUSH. Madam Chairman, we certainly appreciate your time.

We have been joined by Mr. Sarbanes from Maryland and the Chair now recognizes Mr. Sarbanes for 2 minutes for questioning.

Mr. SARBANES. Thank you very much, Mr. Chairman. I appreciate the opportunity. Thanks for holding this hearing. I want to welcome you, Ms. Tenenbaum, to your new role and I am very, very close friends with a fellow named Brad Parham from South Carolina who I think you know and I look forward to getting to know you in your new position.

I just wanted to pass along a concern. I have a number of bulk vendors and there is a number of bulk vendors in Maryland and you are, I think, aware of this provision under CPSIA Section 103(a) regarding the tracking of products and I guess they have expressed concern about that being impractical with respect to some of these smaller items that come packaged in bulk and then are distributed across the country to vending machines and so forth. And to the Commission's credit and to your credit and evidence of you moving quickly in the job to try to address these areas of concern, on July 20 there was a statement of policy issued by your office that for certain category of products, 103, by your interpretation would not apply, and they have just expressed some concern. I wanted to relay and get your comment on about the fact that that doesn't necessarily prevent action at the State level by State Attorneys General acting with respect to the statute, nor does it necessarily mean that future Commissions couldn't reverse its position on that, and I just wanted to get your perspective on how this statement of policy you see working going forward.

Ms. TENENBAUM. Well, this is a good example of us using commonsense to enforce the law is our definition of tracking labels. The law requires manufacturers of children's products to have a tracking label to the extent practical on each product and the packaging. And so we looked at—we told the industry it is not one size-

fits-all, that you must be able to ascertain and by ascertain we have to look at your product to see can we find the name, location and date of production, and can we find who manufactured it and track it down if it needed to be recalled. Regarding—so we got a great deal of praise from a number of industries because we used a commonsense approach to the tracking label. Regarding the Attorneys General, we have regular telephone conferences with them. I will be speaking to the Attorneys General. We want to enrich our relationships with them because we see the fact that this is such a small agency that we don't have the resources to enforce all of the consumer product safety laws without the assistance of our State partners, our local Consumer Product Safety Commissions, the Attorneys General and our local health departments. So we don't—have not found any cases where the Attorneys General have gotten out in front of enforcement ahead of the CPSC and we are encouraging them to let us get our rulemaking finished and work through a lot of these issues administratively so we don't encourage them to bring enforcement injunctions because under the law that is what the Attorneys General can do. They can see injunctive relief.

Mr. SARBANES. So I assume that your ongoing conversation collaboration with them is to sort of cultivate this commonsense approach at all levels?

Ms. TENENBAUM. We are working with them and we certainly want everyone to have a commonsense approach. We hope no one gets out in front of us before we get all the rules in place which we hope will give relief to so many of these industries you are hearing from now. That is our goal to protect the safety of children, to keep intact the integrity of the statute and to work out the best way we can these issues that you are hearing from industry.

Mr. SARBANES. Thank you.

Mr. RUSH. The Chair now recognizes Mr. Stupak for 2 minutes for the purposes of questioning the Chairman.

Mr. STUPAK. Thank you, Mr. Chairman, and I was down in another hearing in telecommunications so that is why I was not here but I am very interested.

Congratulations on your appointment. I look forward to working with you especially in my role as Chairman of Oversight and Investigations.

Let me ask you about the Consumer Product Safety Improvement Act of 2008, and in my Northern Michigan district, ATVs and motorcycles are a way of life for many of us and it is very important to our outdoor tourism and our economy. In the Consumer Product Safety Improvement Act of 2008, purposefully included a provision to regulate youth ATVs and motorcycles, however it was an unintended consequence of the CPSIA that the equipment is also subject to provisions regulating the amount of lead contained in motorcycle and ATV parts. On April 3, 2009, the CPSC voted to delay enforcement of a lead-ban on youth ATV and motorcycles for one year. It was not the intent of Congress to regulate lead content in youth ATV or motorcycles.

So my question would be does the Commission have reports of injury or death caused by lead poisonings, I mean by the use of youth ATVs or motorcycles?

Ms. TENENBAUM. We have over 900 deaths per year from ATVs so the industry has told me.

Mr. STUPAK. Correct, but I mean from lead.

Ms. TENENBAUM. No.

Mr. STUPAK. Nothing from lead.

Ms. TENENBAUM. I don't have any data on that.

Mr. STUPAK. OK, is the Commission testing the youth ATV or motorcycles to determine possible exposure to lead?

Ms. TENENBAUM. We have just met with the ATV industry. The leaders of the industry came over and met with me last week and what they have reported to us is that they could make any lead that would be exposed to a rider inaccessible. They feel like they could make the handlebars inaccessible from lead by putting covers on them.

Mr. STUPAK. Sure.

Ms. TENENBAUM. And handbrakes and also the seat would not contain lead so they have—the stay helped them come up with this and so that would—they are getting back with us to show us how they can do that, and then the other parts of the ATV might be considered inaccessible depending on what technology they can provide to make the tire stem, the brass in it inaccessible, the battery cables inaccessible.

Mr. STUPAK. Well, I understand all this inaccessible.

Ms. TENENBAUM. So based on inaccessibility, that really would solve the issue, we think. We are working with them to clear that up so that they won't have to.

Mr. STUPAK. Well, I am glad you are working with them but if we have no death or injuries from lead exposure, why do we have to go through all these gyrations? Isn't it your responsibility to make sure that the law is properly implemented especially since the intent of Congress was not to ban these vehicles?

Ms. TENENBAUM. We have had plenty of cases of deaths to children from lead exposure and hand-to-mouth.

Mr. STUPAK. But from ATVs and motorcycles?

Ms. TENENBAUM. Well, a child could ingest lead and that is what the statute requires is any lead can't be.

Mr. STUPAK. Right, yes, I agree but with any law there is a practical application, correct?

Ms. TENENBAUM. No question about it and that is why the industry is coming back to us with practical solutions and we think this will take care of any problem they have and they won't have to be regulated.

Mr. STUPAK. All right, let me ask you about this one. This is a recent GAO report, August, 2009, concluded that the CPSC's presence at U.S. ports is limited and in order to identify potentially unsafe products like drugs, inferior steel from China, you must work closely with U.S. Customs and Border Patrol Protection. The report also found that CPSC's activities at U.S. ports could be strengthened by better targeting incoming shipments for inspection and by improving CPSC coordination with the Customs and Border Patrol. As the Chairman of Oversight and Investigations I have spent a lot of years on this especially drugs coming in from other countries, not properly marked, handled properly and we know that FDA's efforts are lacking and place American lives at risk but this GAO re-

port concluded that the FDA has more staff, has more surveillance technology, has more data on incoming shipments in our ports than CPSC who also has the responsibility so that was not a good news report by the GAO. So are you developing any plan to coordinate your port surveillance with other agencies to improve CPSC surveillance at our ports?

Ms. TENENBAUM. We are and I reviewed the report and agree with those findings and will be getting back with Congress in October with our formal response to the report but starting October 1 as a result of that report, CPSC will have access to the Customs Import Safety Center which is called Commercial Targeting and Analysis Center. We will be able to place one full-time employee at that Center to get information that we need in surveying the imports coming into the country.

Mr. STUPAK. OK, currently Custom and Border Patrol doesn't have any authority to deny shipments at a port whether it is steel or whether it is drugs. That is, if a substandard shipment comes into the United States they may flag it but they can't block its entrance into the United States. What does CPSC intend to do when it finds a substandard or hazardous product at a port—right now we just stack them up in warehouses. Do you have any other ideas?

Ms. TENENBAUM. We destroy them. We destroy the product. We have the authority to destroy it and Customs has the authority to flag it. They stopped several products from coming in recently so here is what if you look at our—we have nine people in 300 ports and we also have field staff, 100 field staff but we have nine people at the ports. We—this is a bigger area then just what the GAO reports because the FDA—you are required to send a manifest to the FDA 30 days ahead of time.

Mr. STUPAK. Correct.

Ms. TENENBAUM. We are only required to receive the third-party testing results 24 hours ahead of time under the CPSIA but this would be something that we need to have information earlier. We need through this manifest, this Commercial Targeting Analysis System, those are the manifests and we with the proper technology which we are submitting to Congress in our new technology plan can look and mine this data so we will know what is coming into the port and then if we find products that don't conform under the statute, the manufacturer or importer is required to take those products and remove them from the United States. If they don't have the funds and they have to post a bond, if they don't have the funds, we can destroy them. A lot of times we don't have the amount of funds it requires to destroy them and we might need to start increasing the bond to cover the cost of destroying the product but that is what we do with them.

Mr. STUPAK. OK, so this is new authority underneath the 2008 law then?

Ms. TENENBAUM. No, we have always had the authority to stop—well, no, this is new authority because the third-party laboratories certificate is new under the CPSIA.

Mr. STUPAK. Thank you, Mr. Chairman.

Mr. RUSH. This concludes the questioning of the witness and the Chair wants to recognize Mr. Radanovich who has a unanimous consent request.

Mr. RADANOVICH. Thank you, Mr. Chairman. I do have another unanimous consent request from one other member however I would just like to make it a blanket unanimous consent request that if other members wish to submit statements they be allowed to do so.

Mr. RUSH. All right, well, for the record, the record will remain open for two weeks and members may submit questions to the witness or any other documentation that they want to submit to the record. They have two weeks from today's date in order to submit those questions. The record will remain open for two weeks.

Ms. TENENBAUM. Thank you.

Mr. RUSH. Thank you so much, Madam Chairman, and we look forward to working closely with you as we move forward protecting America's children and families. I want to thank you so very much for your participation.

Ms. TENENBAUM. Thank you. I appreciate the opportunity to meet with all of you and I hope to in the next few weeks meet with many of you individually for your personal questions.

Mr. RUSH. Thank you. Thank you so very much.

The committee is now adjourned.

[Whereupon, at 1:00 p.m., the subcommittee was adjourned.]

[Material submitted for inclusion in the record follows:]

**Congressman Gene Green**  
**House Committee on Energy and Commerce**  
**Subcommittee on Commerce, Trade and Consumer Protection**  
**Hearing on “The Consumer Product Safety Commission: Current Issues and a Vision for**  
**the Future”**  
**September 10, 2009**

Mr. Chairman, thank you for holding this hearing, and I would like to welcome the new Consumer Product Safety Commission Chairwoman Tenenbaum before our Subcommittee for the first time.

You came to the Commission at one of the most critical points in its history as you implement the Consumer Product Safety Improvement Act of 2008 – I was an original cosponsor of that legislation, authored by Chairman Rush.

For too long we watched as the budget and staff continued to shrink at the CPSC, and no action was taken to strengthen the Commission.

The Consumer Product Safety Council holds one of the most important responsibilities in our government – ensuring the products children and families use everyday are safe.

Like many of my constituents, and Colleagues here in Congress, I have four grandchildren and knowing their safety could be compromised by the lack of authority and funding for the Consumer Product Safety Commission, prompted Congress to act, and in a bipartisan manner. The Consumer Product Safety Improvement Act conference report passed Congress by a vote of 424-1.

Unfortunately, there have been many difficulties and delays in implementing the Act – while there was not a significant outcry from our district, we did hear from a lot of small, and second-hand retailers at the beginning of the year that had serious concerns about testing requirements for children’s toys due to lack of guidance from the CPSC.

The stay on enforcement of these provisions, while I believe was necessary due to lack of guidance by the Commission, was troubling nonetheless because it gave the public no more confidence that the Commission was able to enforce consumer protections.

Since then however, I am pleased at the progress Chairwoman Tenenbaum has made in her time at the Commission in issuing 12 rules and policy guidance documents – these actions are a significant step in the right direction for the Commission and in implementing the CPSIA.

Mr. Chairman, thank you again for holding this important hearing to hear from Chairwoman Tenenbaum her plans and direction for the agency.

I’d like to welcome the Chairwoman and I look forward to your testimony on the Commission’s current and future work and the direction you plan to take the agency.

Thank you and I yield back my time.

Statement of the Honorable Cliff Stearns  
CTCP Subcommittee Hearing – September 10, 2009  
“CPSC Oversight: Current Issues and a Vision for the Future”  
321 words

Thank you, Mr. Chairman.

Thank you for holding this important hearing. I would like to begin by welcoming our distinguished witness – Chairman Inez Tenenbaum. I look forward to working with you in your capacity as Chairman of the Consumer Product Safety Commission (CPSC).

We are here today to discuss the current issues the CPSC is facing, and in my mind the biggest issue and highest priority for the Commission is the ongoing implementation of the Consumer Product Safety Improvement Act (CPSIA) as passed by Congress in August of 2008. I, along with all of my colleagues on this committee, are steadfastly committed to ensuring the products and toys our children use are safe – nothing is more important than the wellbeing of our children.

Unfortunately, however, the reality of implementing the CPSIA has proven difficult and is wreaking economic havoc and confusion amongst a broad spectrum of industries and small businesses. This is particularly worrisome given the current financial crisis and severe economic strains that American small businesses and families are up against.

Since the time this law came into effect, I have heard directly from small business owners, charity organizations, and even public libraries in my district - all of who are suffering at the hands of the CPSIA, which is a well-intentioned but unflexible law.

I am therefore supportive of simple legislative fixes to the CPSIA, such as H.R. 1815, of which I am an original cosponsor, that can bring relief to small businesses and industries without the risk of endangering or compromising the safety of our children.

I look forward to working with my colleagues and Chairman Tenenbaum on improving the safety of the products our children use, but I believe we also should work together on achieving a commonsense legislative fix that will untie the hands of the CPSC so that the Commission can continue to be an effective and robust agency in all areas of consumer protection.

**STATEMENT OF  
CONGRESSMAN MICHAEL C. BURGESS, M.D.**

**BEFORE THE**

**SUBCOMMITTEE ON COMMERCE, TRADE AND CONSUMER  
PROTECTION  
COMMITTEE ON ENERGY AND COMMERCE**

**SEPTEMBER 10, 2009 HEARING**

**““Consumer Product Safety Commission Oversight: Current Issues and a Vision  
for the Future”**

Thank you Chairman Rush and to the fellow Members of this Subcommittee. As an alumnus of this subcommittee, I know and appreciate the critical work you are undertaking, and I appreciate this opportunity to talk about an issue which remains extremely important to me.

But first, I would like to congratulate you Ms. Tennebaum on your confirmation as the Chairman of the CPSC. I have watched all 101 minutes of your Senate confirmation hearing and, having also read several of your recent speeches, I think you appreciate the challenge of helming a small agency with a monumental task

And let's be frank. It is the flaws with the CPSIA we should be discussing because that is what the CPSC is drinking from the fire-hose to implement. That hearing was noticed last December when I was still on this subcommittee but got cancelled with no new hearing date set. Now, nine months and countless problems later, here we are, allegedly, discussing oversight issues at the CPSC when everyone in this room knows its all about the CPSIA.

Undoubtedly, Congress has given the CPSC more then it handle. In the 110th, we gave the CPSC, an agency with a 70 million dollar budget in FY'09, at least two major bills. The CPSIA is the focus of so many Members, as it rightly should, but we also

handed you the Virginia Graeme Baker Pool and Spa Safety Act, no small task in-and-of-itself.

So Congress is partly to blame.

But I am concerned with hearing how you will implement the CPSIA.

In September of 2008, the CPSC General Counsel listed 42 required actions pursuant to the CPSIA. In the ensuing twelve months, we've gotten dribbles-and-drabs of action, but nothing in reliable streams. We got a stay in enforcement in testing and labels as well as a stay in enforcement for ATVs. Last month, we have a final rule as it relates to materials which have no business being tested for lead like gemstone and wooden jewelry. We also finally got some recognition from the CPSC about whether books should be exempt from lead requirements, *but the fact that we even had to have a conversation about a piece of legislation which was aimed at prevent lead poisoning in toys was expansively interpreted to include library books is ridiculous.*

These are some of the questions which remain unanswered and what I want to know is whether all these problems in implementation are the fault of the CPSC or the Congress. And if it's not the fault of the CPSC, then how can Congress fix it. Did we poorly draft the bill? What of the 42 required actions in the CPSIA should not occur?

For instance, last month, the CPSIA statutorily mandated the lead standard be dropped from 0.06 percent to 0.009 percent yet we have delayed testing for meeting the higher lead standard – though we have not delayed culpability. How can this make sense? Does it make sense to you?

And you stated in your Singapore speech last month that there are only a mere 170 laboratories which can test all these products covered by the CPSIA – foreign and domestic – when will the testing meet the supply chain?

This bill remains for me the standard as to why we should not rush large, comprehensive legislation through Congress without adequate vetting, testing, input from expert and thorough analysis. This bill has done more damage than good, causing confusion to parents whose sole goal is to protect their children and seriously harming businesses like the ATV industry which will lose more than a billion dollars as a direct result of this bill.

We must fix this problem and we must learn from this problem.

Thank you.

Chairman Rush, I want to thank you for calling this hearing today regarding challenges facing the Consumer Product Safety Commission with implementing the Consumer Product Safety Improvement Act (CPSIA). I would also like to take the time to welcome our distinguished guest, the newly confirmed Chair of the CPSC, Ms. Inez Tenenbaum.

Mr. Chairman, in 2007, this Subcommittee – along with parents throughout the country – was up in

arms over the safety of toys and products for children containing lead that were coming in to this country – and rightfully so. In 2008 alone, an estimated 563 products were recalled, mostly on account of lead poisoning hazards, especially in children’s toys.

To respond to this outcry, Congress overwhelmingly passed CPSIA last year with the intention of improving the safety of the products that get into children’s hands. While I support the intent of CPSIA, I – along with close to 600

constituents who have called or written me on this legislation – have strong concerns with the unintended consequences that have arisen due to this law.

Mr. Chairman, the first of these has to do with provisions in CPSIA that have actually made all-terrain vehicles (ATV's) less safe for children to operate. Some parts of youth ATV's unavoidably contain small quantities of lead in excess of the new limits under CPSIA. As a result, youth ATV's are being removed from showrooms, leaving parents

potentially buying bigger, adult ATV's for their children that could contain a much more hazardous lead content than the small ATV's.

Furthermore, I am concerned that CPSIA may also unintentionally create an unfair competitive advantage for larger companies since they can better shoulder the added costs of further testing their products. I fear that this law puts an unneeded burden on small toy-makers that will inevitably cause them to close their doors, and cost us more jobs when we can ill afford to do so.

As a father, a grandfather, a physician, and a consumer, I recognize the important need and responsibility to safeguard the products that our children play with and enjoy. We all share the common goal of ensuring the safety of our children.

As we move forward, I hope that we can have a future hearing on this issue so that we may also hear from industry stakeholders.

I look forward to the testimony of the Chairwoman, and I yield back the balance of my time.

**Consumers Union \* Consumer Federation of America \* Kids in Danger \*  
Public Citizen \* U.S. PIRG**

September 9, 2009

Rep. Bobby Rush, Chairman  
Committee on Energy & Commerce  
Subcommittee on Commerce, Trade,  
and Consumer Protection  
2125 Rayburn House Office Building  
Washington, D.C. 20515

Rep. George Radanovich, Ranking Member  
Committee on Energy & Commerce  
Subcommittee on Commerce, Trade,  
and Consumer Protection  
2125 Rayburn House Office Building  
Washington, D.C. 20515

Dear Chairman Rush and Ranking Member Radanovich:

As you know, in 2008 Congress overwhelmingly passed, and former President Bush signed, a groundbreaking law: the Consumer Product Safety Improvement Act (CPSIA). This legislation was crafted to address the tens of millions of unsafe products that had infiltrated the marketplace – especially children’s products – and to breathe new life into the beleaguered Consumer Product Safety Commission (CPSC). Faced with an unprecedented number of children’s product recalls, it was clear that there were gaping holes in our country’s safety net, and that industry was doing a poor job of policing itself. Now that the CPSIA has equipped the CPSC with the authority it needs, the agency should be given the opportunity to fully execute the law.

With strong bipartisan support from lawmakers, the CPSIA was designed to make consumer products safer by requiring that toys and infant products be tested before they are sold, and by effectively banning the use of lead and phthalates in children’s products. The law also paves the way for the first comprehensive publicly-accessible database of consumer complaints about unsafe products. It authorizes badly-needed funding so that CPSC has the resources it needs to protect the public, increases the level of civil penalties that the CPSC can assess against violators of the law, and protects whistleblowers who report product safety defects.

Since the law was enacted, the CPSIA has been criticized by some members of industry, particularly about the law’s impact on small businesses. The truth is that the law includes language empowering the CPSC to exempt certain materials from the testing and certification requirements, and to relieve those manufacturers of products that are in no danger of violating the new standards.

In fact, the CPSC has already begun to apply these exclusions. Since the law’s enactment, the CPSC has exempted from regulation the following children’s products: those made from wool, cotton, yarn, dyed or undyed textiles (cotton, wool, hemp, nylon, etc.), including children’s fabric products, such as baby blankets, and non-metallic thread and trim; certain educational toys such as chemistry sets; and children’s books printed after 1985 that are conventionally printed and intended to be read, as opposed to used for play. The CPSC has also exempted from the CPSIA’s lead testing requirements components parts that cannot be accessed by a child, and components of electronic devices intended for children. In addition, the CPSC issued a stay of enforcement of its lead and phthalates testing rules for an entire year in order to give companies

more time to come up to speed on the new rules, and it has created materials to guide small businesses with compliance with the law. **The focus should be on allowing the agency to continue to apply the exclusions already permitted under the law in a common sense way that doesn't jeopardize public health or safety.**

We are encouraged by recent developments at CPSC. Inez Tenenbaum has been installed as the head of the agency, and two new Commissioners have begun to work for a safer marketplace. Staffing levels have increased to 460 full time employees, and the Commission continues to move forward with implementation of the new law in accordance with its defined schedule. The industry had its chance to police itself to ensure the safety of children's products with a disastrous and sometimes deadly result. Now the CPSC must be allowed to lead the way.

Sincerely,

Ami Gadhia  
Policy Counsel  
Consumers Union

Rachel Weintraub  
Director, Product Safety and Senior Counsel  
Consumer Federation of America

Nancy Cowles  
Executive Director  
Kids in Danger

Christine Hines  
Consumer and Civil Justice Counsel  
Public Citizen

Elizabeth Hitchcock  
Public Health Advocate  
U.S. Public Interest Research Group

**Consumers Union \* Consumer Federation of America \* Union of  
Concerned Scientists \* Kids in Danger \* U.S. Public Interest Research  
Group \* Public Citizen**

For Immediate Release:  
September 9, 2009

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**Consumer, Scientific and Public Health Groups Support CPSC Efforts to  
Implement New Product Safety Law and Protect Consumers from Unsafe  
Products**

**Groups Urge House Subcommittee to Highlight These Efforts**

Inez Tenenbaum, the new chairman of the Consumer Product Safety Commission, is the invited witness for a hearing, entitled "Consumer Product Safety Commission Oversight: Current Issues and a Vision for the Future," to be held on Thursday, September 10, 2009, by the Subcommittee on Commerce, Trade, and Consumer Protection of the U.S. House of Representatives Energy and Commerce Committee.

As Ms. Tenenbaum prepares to testify before Congress for the first time since her confirmation, our coalition of consumer, scientific and public health groups is encouraged by the significant steps taken over the last year to improve the safety of consumer products, and we now urge the subcommittee to focus on the critical issues that will further advance the agency's mission to safeguard consumer products.

First, it is important to highlight the risks to consumers in the global marketplace before passage of the Consumer Product Safety Improvement Act (CPSIA): too many dangerous products were on store shelves, some seriously harming, and even killing, their customers; the CPSC had neither the funds nor the regulatory authority to effectively solve these problems; and there were gaping holes in existing laws that needed to be closed to protect consumers. The CPSIA was passed almost unanimously in Congress to solve the problems plaguing the marketplace.

Second, we look forward to a dialogue about how the CPSIA and CPSC's efforts are restoring consumer confidence in the marketplace. Consumers lost confidence in our product safety net

because of the many recalls of children's products and the numerous deaths and injuries posed by those products. When fully implemented, the CPSIA will restore consumer confidence by improving product safety, by requiring that they be tested for safety before they are sold -- an action that most consumers assumed was already occurring. In addition, the CPSIA turned voluntary standards for toys and other juvenile products into mandatory requirements which will help to ensure that those products meet safety standards.

Finally, we look forward to hearing how the Commission is implementing the new law including the status of the many regulations that the agency is promulgating. We hope the Chair will share her vision for the future of product safety, including details about her effective and much needed core priorities establishing transparency, enforcement and education and advocacy as the agency's primary goals.

We look forward to a productive dialogue about how the CPSC will continue to fulfill its mission and protect consumers from the hazards posed by unsafe products.

**Consumers Union  
Consumer Federation of America \* Kids in Danger  
Public Citizen \* U.S. PIRG**

**Myths and Facts on CPSIA Implementation**

In August 2008, the Consumer Product Safety Improvement Act was passed with overwhelming bipartisan support in Congress, signed by President Bush and enthusiastically backed by consumers, public interest organizations and industry representatives. In a publicly released statement, the Toy Industry Association (TIA) applauded the president's signing of the bill. Its president Carter Keithley said at the time: "With the health and safety of children our primary concern, the toy industry supports the creation of a uniform national standard for product safety and testing, upon which consumers across the nation can rely."

As TIA's Keithley stated, the new law added safety and testing requirements for consumer products, and children's products in particular, including the gradual elimination of lead and a ban of phthalates in toys and children's articles.

***Myth: CPSIA deadlines were unrealistic and too short for businesses to comply.***

***Fact: CPSIA has built-in time for compliance and CPSC has repeatedly stayed enforcement of key provisions.***

The law granted a six-month period for industry to ready their goods in compliance with the new ban on toxic chemicals in children's products. Compliance with the new lead standards and phthalates ban would begin on February 10, 2009. On the day President Bush signed the law, the Toy Industry Association said in a statement "Toy manufacturers and major retailers are already moving to conform to the legislation...."

Many other provisions, including tracking labels, lower lead limits and more didn't go into effect until a year after the bill was signed.

***Myth: CPSIA provisions don't keep children safe, they simply make it harder to do business.***

***Fact: Implementation of CPSIA has reduced lead in children's products; removed dangerous phthalates from many toddler toys and ensured the children's products, including cribs, strollers and high chairs are tested for safety before they are sold.***

***Myth: Lead in toys isn't a problem anyway – the amount is so small it won't really hurt children.***

***Fact: According to the American Academy of Pediatrics, there is no safe level of lead exposure.***

"Lead is potent neurotoxin that causes permanent, irreversible brain damage. Children and their developing brains are at special risks for the harm caused by lead, and those effects often have repercussions throughout the lifespan. There is no known "safe" level of lead for children. No study has determined a blood lead level that does not impair child cognition. Since any

measurable lead level causes lasting harm, prevention of exposure is the only treatment. Lead exposure is an important, unnecessary, and preventable poisoning.”

Lead poisoning is also cumulative, so the amount from a toy or lunchbox will add to lead the child has been exposed to in the environment, increasing the negative effects.

***Myth: CPSIA has to be changed through additional legislation to address business concerns about expensive testing and exemptions of certain products.***

***Fact: CPSIA contains within its language the flexibility CPSC needs to address concerns and exempt products that don't pose a risk to children.***

Business concerns that emerged due to the lack of CPSC guidance have developed into a full-blown demand for major changes to the law. However, the CPSIA does not need to be changed to address these concerns. Congress has included language in the CPSIA that already empowers the agency to provide exclusions for certain materials. The CPSC has the power **right now** to exempt certain materials from testing and certification requirements, to relieve those manufacturers who are in no danger of violating the new standards.

Contact for more information:

Rachel Weintraub, Consumer Federation of America, 202.939.1012

Ami Gadhia, Consumers Union, 202.462.6262

Nancy Cowles, Kids In Danger, 312.595.0649

Christine Hines, Public Citizen, 202.454.5135

Elizabeth Hitchcock, U.S. PIRG, 202.546.9707



The Alliance for Children's Product Safety  
2000 K Street, N.W., Suite 500  
Washington, DC 20006

September 3, 2009

The Honorable Henry Waxman  
Chairman

The Honorable Joe Barton  
Ranking Member

The Honorable Bobby Rush  
Subcommittee Chairman

The Honorable George Radanovich  
Subcommittee Ranking Member

House Energy and Commerce Committee  
2125 Rayburn House Office Building  
Washington, DC 20515

House Energy and Commerce Committee  
2322A Rayburn House Office Building  
Washington, DC 20515

Dear Chairmen and Ranking Members:

I am writing in regard to the Committee hearing set for September 10, 2009 in which the Hon. Inez Tencenbaum, Chairman of the U.S. Consumer Product Safety Commission (CPSC), is scheduled to testify on the implementation of the Consumer Product Safety Improvement Act (CPSIA).

I am very disappointed that no small businesses impacted by the new law have been invited to share their experiences in testimony before the Committee. The business community has been actively calling for hearings since the passage of the CPSIA because of the draconian effects of the new law. Our family business makes educational products for schools and has an exemplary 25-year safety record because of our hard work to assure high quality and compliance with law. Yet the innumerable, onerous provisions of the CPSIA have had a devastating impact on our ability to conduct business. These issues need to be explored by the Committee based on the testimony of real companies suffering real pain.

The problems caused by the law are myriad. The overly broad definition of "children's products" swept in many products incapable of harming children from lead or phthalates. The CPSC itself has been hobbled by the CPSIA's strict new rules that prohibit risk assessment. The agency has no flexibility to exercise judgment and as a result, have issued impractical guidance and unworkable regulations. In addition, the exemption process under the law is both very limited and very expensive.

The severe penalties under the law are not scaring companies into compliance – they are shooping companies out of the market. Even the CPSC's own guidance to resale shops advises stores to consider the option to stop doing business in children's products.

The deck is stacked against small business under the new law. Ironically, while crafters are left to puzzle over how to "ascertain" co-hort information on their products, the new law awards a freebie to large businesses who seek to test their own products.

I strongly believe that the perspective of businesses like our company is essential to a complete picture of the problems caused by the CPSIA and its implementation. Thank you for your consideration of this important matter.

Sincerely,



Richard Woldenberg,  
Chairman  
Learning Resources Inc.

CC: Rep. Joe Barton, Ranking Member, House Committee on Energy and Commerce

**Coalition for Safe and Responsible ATV Use**

2000 K Street, NW ♦ Suite 500 ♦ Washington, DC 20006

September 8, 2009

The Honorable Henry Waxman  
Chairman

The Honorable Joe Barton  
Ranking Member

The Honorable Bobby Rush  
Subcommittee Chairman

The Honorable George Radanovich  
Subcommittee Ranking Member

House Energy and Commerce Committee  
2125 Rayburn House Office Building  
Washington, DC 20515

House Energy and Commerce Committee  
2322A Rayburn House Office Building  
Washington, DC 20515

Dear Chairmen and Ranking Members:

We write on behalf of the all-terrain vehicle (ATV) industry in regard to the Committee's upcoming hearing on September 10, 2009 in which the Hon. Inez Tenenbaum, Chairman of the U.S. Consumer Product Safety Commission, is due to testify regarding implementation of the Consumer Product Safety Improvement Act (CPSIA).

We applaud the Committee's interest in keeping abreast of the status of CPSIA implementation. However, we are disappointed that businesses such as ours, who have suffered the unintended consequences of the new law, have not been invited to testify before the Committee regarding its impact on our ability to conduct business.

The unintended consequences of the CPSIA on the ATV industry and consumers have been enormous. ATV riding is an outdoor recreation activity for the entire family. Yet due to the lead provisions contained in the CPSIA, since February 10, 2009 the law has effectively banned the sale of smaller, speed-limited ATVs designed specifically for children. In addition, many consumers who previously purchased such vehicles have been unable to get them serviced or repaired.

The CPSC's own studies show that almost 90% of youth injuries and fatalities occur on adult-sized ATVs, and the Commission recognized this fact when issuing a stay of enforcement in May 2009. The Commission stated that without the availability of youth models "children 12 and younger . . . would likely face a more serious and immediate risk of injury or death" than any theoretical risk from lead exposure.

Unfortunately, CPSC's stay of enforcement is not a permanent solution nor has it been effective in keeping youth sized ATVs on the market. Due to the uncertainties and potential risks of selling under the stay, many manufacturers and dealers are not selling Y-6+ or other youth model off-highway vehicles. In fact, at least half of the legacy manufacturers have stopped selling Y-6+ youth models for these reasons.

We appreciate your consideration of this matter and look forward to engaging in a substantive dialogue with the Committee about fixing the unintended consequences of the CPSIA and ensuring the safety of youth operators. It is now clear that amendment of the CPSIA's lead content provisions is necessary to keep properly sized, speed-limited vehicles available for children.

Sincerely,



Edward D. Krenik  
Executive Director, Coalition for Safe and Responsible ATV Use

**COALITION FOR SAFE AND AFFORDABLE  
CHILDRENSWEAR, INC.**

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kidsfashions@gmail.com

September 8, 2009

The Honorable Henry Waxman  
Chairman

The Honorable Joe Barton  
Ranking Member

The Honorable Bobby Rush  
Subcommittee Chairman

The Honorable George Radanovich  
Subcommittee Ranking Member

House Energy and Commerce Committee  
2125 Rayburn House Office Building  
Washington, DC 20515

House Energy and Commerce Committee  
2322A Rayburn House Office Building  
Washington, DC 20515

Dear Chairmen and Ranking Members:

I write in regard to the Committee's hearing scheduled for September 10, 2009. At this hearing, Inez Tenenbaum, Chairman of the U.S. Consumer Product Safety Commission (CPSC), will testify regarding implementation of the Consumer Product Safety Improvement Act (CPSIA).

I am President of the Coalition for Safe and Affordable Childrenswear, a group of nearly 130 small children's clothing manufacturers in the New York area. Our member companies are all family owned businesses that have been making safe children's products for years. Many of our companies are being run by the second and in some cases the fourth generations of the company founders. Product safety has always been and will continue to be a priority for our companies.

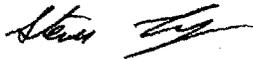
We welcomed the CPSIA when it was passed, however its overly broad definition of children's products, unrealistic implementation timelines, and the lack of clear guidance from the CPSC has caused very considerable confusion in the marketplace. We are struggling to implement the numerous provisions of the CPSIA without the benefit of the required direction and clarifications by the CPSC. Because the CPSIA prohibits the CPSC from using risk assessment in enforcing the law, we remain obligated to conduct costly and time-consuming tests to repeatedly prove that our safe products conform to the lead standards. Put simply, these and other burdensome provisions of the CPSIA threaten our ability to remain in business and provide jobs and do nothing to improve product safety.

While we are pleased that the Committee is holding the September 9th hearing to learn more about the challenges involved in CPSIA implementation, we are disappointed that businesses such as ours will not be afforded the opportunity to testify before the Committee to discuss the unintended consequences of the Act.

We would welcome the opportunity to discuss this important issue with you and Members of the Committee. It is our view that the only way to resolve many of these issues is to amend the law to provide for a common sense, risk-based approach. As you know, there have been more than 10 bills introduced in Congress to amend the CPSIA. We strongly urge you to begin the legislative process and provide the appropriate relief.

We appreciate your consideration of this matter. We are available to discuss any of these issues with your staff.

Sincerely,

A handwritten signature in black ink, appearing to read "Steven Levy", with a stylized flourish at the end.

Steven Levy  
President  
Coalition for Safe and Affordable Childrenswear



September 4, 2009

Dear Chairmen and Ranking Members:

This letter is in response to the Committee hearing set for Sept. 10, 2009, where the Hon. Inez Enenbaum, Chairman of the U.S. Consumer Product Safety Commission (CPSC), is scheduled to testify on the implementation of the Consumer Product Safety Improvement Act (CPSIA).

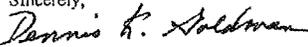
As the President of ETA/Cuisenaire, an educational publisher of hands-on learning materials and books, I am writing to express my extreme disappointment that none of the small businesses severely impacted by the new law have been included in the scheduled testimony before this Committee. This law has taken a devastating toll on small businesses like ours, and as such, the small business community has been aggressively calling for hearings since the passage of the CPSIA in order to make our concerns known. Now, when a hearing has finally been set, we are excluded. Why? Throughout its history, ETA/Cuisenaire has always worked hard to comply with safety laws and assure our products meet the highest standards. Now, the numerous, unyielding strict new rules of the CPSIA have caused major difficulties for us and our ability to continue to conduct business. The Consumer Product Safety Committee needs to hear our issues. This situation cannot be addressed in a vacuum. The small businesses who are out in the trenches day-in and day-out, trying to do the best they can, while producing the highest-quality products and providing a livelihood for dedicated employees, are the ones whose voices need to be heard. Especially today, when our economy is already facing serious deficits, roadblocks like the CPSIA do not need to be thrown into the paths of dedicated small businesses like ours.

The overly broad definition of "children's products" unfortunately includes many products that could not even possibly harm children from lead or phthalates. The CPSIA's rules are so strict that they even prohibit risk assessment, with no flexibility to exercise good, sound judgment. This has resulted in unrealistic, impractical regulations. And, equally unfortunate, the exemption process under this new law is restrictive and prohibitive.

The severe penalties under the law will only lead to massive lay-offs and to small companies closing down and leaving the market, in spite of years of excellent service and products that the marketplace sorely needs. How does this equal compliance? The deck is clearly stacked against us, while the new law offers rewards to large companies who can afford to test their own products.

It is imperative that the perspective of small businesses be heard so that a true understanding of the implications of the CPSIA be known and can be addressed accordingly.

I appreciate your consideration and look forward to future open hearings where all sides of the table can present their issues.

Sincerely,  
  
 Dennis K. Goldman  
 President



September 4, 2009

Dear Chairmen and Ranking Members:

As the President of CPW, a supplier of educational and classroom materials, I am writing to express my displeasure and disappointment that none of the small businesses severely impacted by the new Consumer Product Safety Improvement Act (CPSIA) have been included to voice their concerns in the Committee hearing set for Sept. 10, 2009, where the Hon. Inez Enenbaum, Chairman of the U.S. Consumer Product Safety Commission is scheduled to testify.

The small business community has been aggressively calling for hearings since the passage of the CPSIA in order to make our concerns known. Small businesses like ours have been severely impacted by the punitive effects of this new law. Our company has consistently been extremely conscientious about assuring we always comply with safety laws and assure our products meet the highest standards. Now, the numerous, unyielding strict new rules of the CPSIA have caused major difficulties for us and our ability to continue to conduct business. CPW is dedicated to doing the best that it can for its customers every day. The Consumer Product Safety Committee needs to hear the issues of real companies.

How can a company operate when the term "children's products" could mean just about anything based on how it is used? The CPSIA's rules are unrealistic. The exemption process is prohibitive, the rules are inflexible to any logical risk assessment, and the regulations make going out of business the most logical choice.

The landscape, a short time from now, is not difficult to envision. The severe penalties under the law will leave only large companies that were all able to survive the huge cost of testing already safe products and the small companies will simply collapse; leaving a gaping hole of products that the marketplace needs.

We need our chance to come before the Commission and let them hear how CPSIA is really impacting the marketplace. It is imperative that the perspective of small businesses be heard so that a true understanding of its implications be known and can be addressed accordingly. I strongly believe that the perspective of businesses like ours is essential to a complete picture of the real issues CPSIA brings to today's marketplace.

Thank you for your consideration of this important matter.

Sincerely,

William A. Chiasson  
President - CPW

Classroom Products Warehouse™  
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Tel: 800-271-8305 • Fax: 800-280-6110 • www.shopcpw.com

## chapteroneorganics

September 4, 2009

House Energy and Commerce Committee  
2322A Rayburn House Office Building  
Washington, DC 20515

The Honorable Henry Waxman, Chairman  
The Honorable Joe Barton, Ranking Member  
The Honorable Bobby Rush, Subcommittee Chairman  
The Honorable George Radanovich, Subcommittee Ranking Member

RE: House Subcommittee on Commerce, Trade, and Consumer Protection Hearing –  
Scheduled for Thursday, September 10, 2009

Dear Chairmen and Ranking Members:

I am writing in regard to the subcommittee CPSIA hearing scheduled for Sept 10, 2009. I have read that Chairman Tenenbaum was the one person invited to testify. While I am happy to hear that the subcommittee is finally holding a hearing, Ms. Tenenbaum is not representative of businesses or consumers. Inviting one person to testify at a hearing that impacts the livelihoods of so many Americans is the opposite of an open and transparent government that the current administration has claimed they would provide.

While the CPSC has attempted to make common sense interpretations without an amendment they are still unable to apply risk analysis. Many but not all of the materials we use are exempted because they are organic yet I still have many unanswered questions regarding CPSIA and as a result, this slows the growth of the business and the people we employ. I understand the CPSC is working on handbooks to help businesses. "Handbook" sounds nice for a press release and justification for "work" at the CPSC but handbooks are not going to help our businesses, we need real solutions in the real world of making real and safe products.

The recent allowance of Mattel to do their own testing, not requiring them to use 3<sup>rd</sup> party labs is incomprehensible. After reviewing the history of the recalls – it is my understanding that they were the primary source of the problem and violated existing laws due to poor supply chain management. I don't understand how it is justified that Mattel can test their own products while the rest of us are forced to pay a premium and wait in a certified lab when there are viable alternatives to 3<sup>rd</sup> party certified labs and applying risk analysis.

It would be greatly appreciated if you could put the barriers down regarding the CPSIA, start working with our businesses, and allow us to testify.

Sincerely,

Jennifer Murphy  
President





**Educational  
Insights®**

## Engage Minds, Inspire Play.™

September 4, 2009

The Honorable Henry Waxman  
Chairman

The Honorable Bobby Rush  
Subcommittee Chairman

House Energy and Commerce Committee  
2125 Rayburn House Office Building Washington, DC 20515

The Honorable Joe Barton  
Ranking Member

The Honorable George Radanovich  
Subcommittee Ranking Member

House Energy and Commerce Committee  
2322A Rayburn House Office Building  
Washington, DC 20515

Dear Chairmen and Ranking Members:

I am writing in regard to the Committee hearing set for September 10, 2009 in which the Hon. Inez Tenenbaum, Chairman of the U.S. Consumer Product Safety Commission (CPSC), is scheduled to testify on the implementation of the Consumer Product Safety Improvement Act (CPSIA).

As someone who runs a small business impacted by this new law I am disappointed that no representatives from the business community (particularly small businesses) have been invited to testify before the Committee. The business community has raised many legitimate and serious objections to this law and its implementation. To exclude our experiences over the past 13 months and our point of view is wrong.

The provisions of the CPSIA have severely impacted our small business in spite of the fact that prior to it we had a compliant safety record for nearly 50 years. It is important that the Committee hear the issues created by this law from a business perspective of real companies.

I strongly urge the Committee to reconsider its decision and allow the perspective of small businesses to be heard. Thank you for your consideration of this important matter.

Sincerely,

Lisa Gulli  
General Manager  
[lgulli@educationalinsights.com](mailto:lgulli@educationalinsights.com)

152 W. Walnut Street, Suite 201  
Gardena, CA 90248  
(800) 933-3277 phone  
(847) 281-2869 fax  
[educationalinsights.com](http://educationalinsights.com)

September 4<sup>th</sup>, 2009

The Honorable Henry Waxman  
Chairman

The Honorable Bobby Rush  
Subcommittee Chairman

House Energy and Commerce Committee  
2125 Rayburn House Office Building Washington, DC 20515

The Honorable Joe Barton  
Ranking Member

The Honorable George Radanovich  
Subcommittee Ranking Member

House Energy and Commerce Committee  
2322A Rayburn House Office Building  
Washington, DC 20515

Dear Chairmen and Ranking Members:

I apologize for not writing a longer letter, but as the owner of the biggest little toy store in Lake County, California, my wife and I are kept very busy, so I'm going to keep this brief. The new child protection laws have been a nightmare for our business. It has left us in a state of constant panic that we could be sued and have to declare bankruptcy. We, like almost everyone in the toy industry, take child safety very seriously, but to change the laws in such a way as to make almost all of my inventory unsellable is seriously flawed. And, when you have hearings into the implementation of the laws to not invite those most impacted is seriously wrong. If you are our elected representatives, please take the time to listen to our opinion and not just those you have appointed. One of the things I have learned is that most employees will only tell you what you want to hear. Please open up this hearing to representatives from small business and manufacturing.

Sincerely,

Jason Curtis  
Owner, Funtopia  
21209 Calistoga St  
Middletown, CA 95461  
707-987-0114  
funtopiatoy@gmail.com



**TRANSCIENCE CORPORATION**

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04 IX 09 / 0929 PDT

The Honorable Henry Waxman  
Chairman

The Honorable Bobby Rush  
Subcommittee Chairman

House Energy and Commerce Committee  
2125 Rayburn House Office Building Washington, DC 20515

The Honorable Joe Barton  
Ranking Member

The Honorable George Radanovich  
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2322A Rayburn House Office Building  
Washington, DC 20515

Dear Chairmen and Ranking Members:

I am writing in regard to the Committee hearing set for September 10, 2009 in which the Hon. Inez Tenenbaum, Chairman of the U.S. Consumer Product Safety Commission (CPSC), is scheduled to testify on the implementation of the Consumer Product Safety Improvement Act (CPSIA).

I am very disappointed that no small businesses impacted by the new law have been invited to share their experiences in testimony before the Committee. The business community has been actively calling for hearings since the passage of the CPSIA because of the draconian effects of the new law. Our family business makes educational products for schools and has an exemplary 25-year safety record because of our hard work to assure high quality and compliance with law. Yet the innumerable, onerous provisions of the CPSIA have had a devastating impact on our ability to conduct business. These issues need to be explored by the Committee based on the testimony of real companies suffering real pain.

The problems caused by the law are myriad. The overly broad definition of "children's products" swept in many products incapable of harming children from lead or phthalates. The CPSC itself has been hobbled by the CPSIA's strict new rules that prohibit risk assessment. The agency has no flexibility to exercise judgment and as a result, have

issued impractical guidance and unworkable regulations. In addition, the exemption process under the law is both very limited and very expensive.

The severe penalties under the law are not scaring companies into compliance - they are shooing companies out of the market. Even the CPSC's own guidance to resale shops advises stores to consider the option to stop doing business in children's products.

The deck is stacked against small business under the new law. Ironically, while crafters are left to puzzle over how to "ascertain" cohort information on their products, the new law awards a freebie to large businesses who seek to test their own products.

I strongly believe that the perspective of businesses like our company is essential to a complete picture of the problems caused by the CPSIA and its implementation. Thank you for your consideration of this important matter.

Sincerely, George C Atamian

**George C. Atamian**

**Transcience Corporation**

**Creators & Owners of Sea-Monkeys®**

**President Brand Management**

**& Business Development**

**2315 N. Laurel Ave**

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**[www.sea-monkeys.com](http://www.sea-monkeys.com)**

## NASCO – Fort Atkinson

WORLDWIDE SERVICE TO EDUCATION – AGRICULTURE – INDUSTRY  
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September 4, 2009

The Honorable Henry Waxman  
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2125 Rayburn House Office Building, Washington, DC 20515

The Honorable Joe Barton  
Ranking Member

The Honorable George Radanovich  
Subcommittee Ranking Member

House Energy and Commerce Committee  
2322A Rayburn House Office Building  
Washington, DC 20515

Dear Chairmen and Ranking Members:

I am writing in regard to the Committee hearing set for September 10, 2009 in which the Hon. Inez Tenenbaum, Chairman of the U.S. Consumer Product Safety Commission (CPSC), is scheduled to testify on the implementation of the Consumer Product Safety Improvement Act (CPSIA). I believe that additional input from small businesses throughout this country not only deserve to be heard but MUST be heard for the committee to make sound judgments and decisions regarding the Consumer Products Safety Improvement Act of 2008. Some of the issues that are impacting my business are as follows:

1. The CPSC granted relief to companies to acquire Certificates of Conformity from the original deadline of 2/10/2009 too 2/10/2010 which was needed. But they did not grant relief on companies having to prove that the products they are selling are safe. If I'm a reseller and the manufacturers don't supply me a certificate of conformity on 2/10/2009 how do I know they are safe? The law is requiring me as a reseller to prove the item is safe or not sell it. This makes no sense whatsoever.

2. One of my manufacturers makes scales/balances that have been a staple of the education market for over fifty years. One of the accessories that are supplied with the balance is a weight set made from brass. Because brass contains lead as a part of the manufacturing process, this manufacturer has stopped shipping me product until an alternative weight set can be manufactured.  
That may take 4-6 months to complete the production cycle. In the first month I lost \$54,000 in sales and have lost some customers because I could not ship what they were asking me to ship. They went somewhere else to get their product.  
The irony of this situation is that brass is becoming a taboo raw material in the toy industry because it contains lead in its makeup although it is not proven that any child has ever contracted any illness due to touching brass. Yet children drink water from brass plumbing fixtures every day of their lives.
3. For catalog sales, we must select products for new catalogs 6 to 8 months in advance to get the catalog to market on time. Any product that you advertise for sale and are no longer available due to testing not being done or a product that was dropped from manufacture due to the testing requirements being too costly to continue production, ends up being a hole in our catalog that is no longer producing sales. Wasted space in a catalog costs catalog sales company's money. That space can't be filled until the next catalog is created. In our case a year later. We lose sales of that catalog space for a whole year. Lost sales equates to lost jobs. This makes absolutely no sense in our current economy.
4. My company prides itself on the ability to serve its customers better than our competitors by offering competitive pricing, fast service and having the product the customer ordered ready to ship without backordering.  
Our backorder levels have increased by over \$260,000 this year from last year due to manufacturers not being able to deliver and prove that their products meet or exceed the CPSIA test requirements. It's not that the product won't meet the requirements, it's that the testing labs are so backed up that they can't get the tests performed or that the increased cost of the testing added to the current cost of manufacturing and marketing the product, prices the product above what the consumer is willing to pay. When products leave the marketplace so do the jobs that the sale of the product supported.  
In any case my service levels are being disrupted and those customers are taking their business somewhere else. This is ruining the reputation of my company which we have worked for over 65 years to build.

5. Looking at just these few issues, adding the effect of them up is costing this country JOBS. In a time when the economy is already suffering, our knee-jerk reaction to a few highly publicized incidents that were corrected by the toy industry are now leading to changes that are causing the industry to fill our landfills with products that can't be sold and won't be recycled because the recycled materials would contain the same lead and phthalates that were in the original product. This is not a "green" initiative. I urge the Congress to re-think this law. Set deadlines that can be achieved by the toy industry when it re-implements and talk to ALL Segments of the toy industry to get input before making decisions.
6. When developing new products for children 12 years or younger, companies must now include into the R&D costs the new requirements for testing to prove the end product will meet the new safety standards for lead and phthalates. Not only must these companies pay for this testing in the initial development of the product, but each time companies outsource the manufacturing to another company the testing must be completed again. I bring this up not for just the initial added cost but for what it will actually do to limit open competition in the marketplace. Some companies will not bid these manufacturing runs, staying with their initial provider to avoid paying again for product testing. This limits open competition and encourages inflated costs.

I believe that everyone in the toy industry wants to sell safe products. I also believe that some standards are necessary and should be enforced to assure that we are all making products safely. But how you have implemented those standards has impacted the toy industry severely in the form of lost jobs, lost products that are safe but too expensive to produce with the new testing costs, have caused our landfills to be filled with products that were purchased before the law was enacted and because of the very vague definition of what is a toy, products that you did not intend to be part of this law have disappeared from fear that a child could somehow have access to it.

Sincerely,

Jack Marshall  
Director of Purchasing  
Nasco

*Nasco International*



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W. Phil Niemeyer  
President

September 4, 2009

The Honorable Henry Waxman, Chairman  
The Honorable Bobby Rush, Subcommittee Chairman  
House Energy & Commerce Committee, 2125 Rayburn House Office Bldg, Washington, DC 20515  
The Honorable Joe Barton, Ranking Member  
The Honorable George Radanovich, Subcommittee Ranking Member

House Energy & Commerce Committee  
2322A Rayburn House Office Building  
Washington, DC 20515

Dear Chairmen & Ranking Members:

Since the Consumer Product Safety Act, there has been nothing but confusion and hardship for everyone involved. The law is overly broad and does little to really protect the consumer while creating an unreasonable burden on business.

I now understand that you are having a hearing, but only calling the Honorable Inez Tenenbaum to testify. You need to expand the list of people testifying. This is a very serious issue for everyone in this business and has the potential to put many companies out of business.

In our company, we face tremendous write-offs with merchandise that was perfectly legal to sell a year ago and now is not. There should be some grandfather clause for product manufactured before this new law. None of the product has lead in it, but the cost to test and now follow the manufacturing batch is more than the potential sales for many products. A year or even two years is not enough and as with many items, we might have considerably more in inventory.

Please expand the hearing so you are able to hear more sales of what you have created.

Sincerely,

NASCO

W. Phil Niemeyer  
President



September 8, 2009

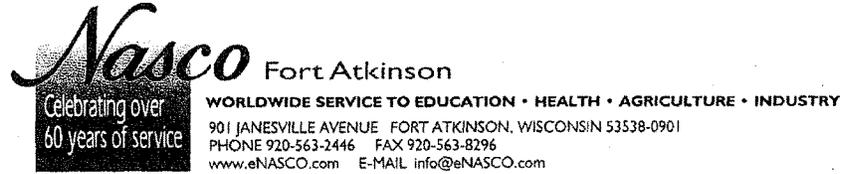
Dear Sir,

The CPSIA has caused us to spend many thousands of dollars in an effort to become compliant. In these economic times it is unfortunate that we could have spent the money making new products and creating many new jobs. We converted over forty different materials, spent over 1600 hours, bought new equipment to the tune of \$35,000.00 and in the end children are no safer then they were before. The idea that children 12-5 need this level of protection is ridicules. At the age of 12 children can baby sit infants but they are covered by this law?

I believe when this law was written you had the best of intentions, but I do not believe you understood the ramifications. I do not want children to be exposed to anything harmful that we can control. No one in their right mind was that, but this law goes too far.

Best regards,

Dennis C. Van De Hey  
Nasco Plastics Plant Manager



September 8, 2009

Dear Chairmen and Ranking Members:

I am writing in regard to the Committee hearing set for September 10, 2009 on the implementation of the Consumer Product Safety Improvement Act (CPSIA).

It is disappointing that no small businesses have been invited to share their experiences in testimony before the Committee regarding the new law. The business community's call for hearings since the passage of the CPSIA appears to have been ignored. Our business makes and distributes educational products for schools, always with concern for the safety of our employees and the teachers and children that use them. The CPSIA requirements have had a devastating impact on our ability and the ability of our suppliers to conduct business. These issues need to be explored by the Committee and the best way to do that is to hear from the thousands of companies affected.

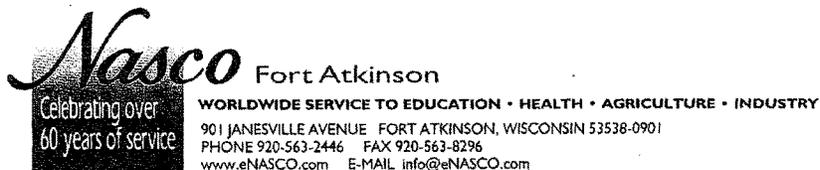
The severe penalties imposed by the law are driving companies and innovators out of the market at a time when we need creativity to shine, to create employment and provide teaching tools that will move our kids ahead in Science, Mathematics, the Arts, Social Development and Reading.

I strongly believe that the perspective of businesses is essential to understand the problems caused by the CPSIA and its implementation. Thank you for your consideration of this important matter.

Sincerely,

Thomas B. Belzer  
Director of Educational Sales

tbelzer@enasco.com



9/8/09

The Honorable Henry Waxman  
 Chairman

The Honorable Bobby Rush  
 Subcommittee Chairman

House Energy and Commerce Committee  
 2125 Rayburn House Office Building Washington, DC 20515

The Honorable Joe Barton  
 Ranking Member

The Honorable George Radanovich  
 Subcommittee Ranking Member

House Energy and Commerce Committee  
 2322A Rayburn House Office Building  
 Washington, DC 20515

Dear Chairmen and Ranking Members:

I am writing in regard to the Committee hearing set for September 10, 2009, in which the Honorable Inez Tenenbaum, Chairman of the U.S. Consumer Product Safety Commission (CPSC), is scheduled to testify on the implementation of the Consumer Product Safety Improvement Act (CPSIA).

I am very disappointed that no businesses impacted by the new law have been invited to share their experiences in testimony before the Committee. As a Sales and Marketing Director for a large direct mail catalog company in the school supply market, I wanted to share how Nasco and myself have been significantly impacted by CPSIA:

- 1) When Nasco sent out the first request for product safety information to our vendors in the fall of 2008, I personally received at least 100 phone calls and e-mails from vendors asking questions about the forms and information we needed. I spent at least 40 hours (the five days after the initial contact) responding to questions and concerns. Some vendors had no idea what CPSIA was or what their responsibility was relating to this new law. This process continues today.
- 2) I have spent countless hours attending meetings, trainings and researching issues related to CPSIA. This has prevented me from completing other important tasks that are critical for my position, such as visiting with customers, certain catalog initiatives, etc. This "distraction" probably cost us business in the long run.

- 3) I have spent countless hours dealing with the fallout of CPSIA. For our Early Learning catalog, we have replaced at least 100 items that were dropped by vendors due to CPSIA issues. This has affected our art department as well, with many hours setting up new part numbers, writing new copy, new photography, etc. I have also spent additional time contacting vendors after our February 2009 catalog meetings and asking them to complete and submit the safety paperwork.
- 4) Overall, I would describe the situation as a very challenging for myself, Nasco, our sister companies and vendors. It has been a very difficult time for everyone.

I strongly believe that the perspective of businesses like our company is essential to a complete picture of the problems caused by the CPSIA and its implementation. Thank you for your consideration of this important matter.

Sincerely,

*Scott R. Beyer*

Director of Early Childhood Sales and Marketing

Nasco

901 Janesville Avenue

Fort Atkinson, WI 53538-0901

**Ph:** 920-568-5577

**E-mail:** sbeyer@enasco.com



September 8, 2009

The Honorable Henry Waxman  
Chairman

The Honorable Bobby Rush  
Subcommittee Chairman

House Energy and Commerce Committee  
2125 Rayburn House Office Building, Washington, DC 20515

The Honorable Joe Barton  
Ranking Member

The Honorable George Radanovich  
Subcommittee Ranking Member

House Energy and Commerce Committee  
2322A Rayburn House Office Building  
Washington, DC 20515

Dear Chairmen and Ranking Members:

I am writing in regard to the Committee hearing set for September 10, 2009 in which the Hon. Inez Tenenbaum, Chairman of the U.S. Consumer Product Safety Commission (CPSC), is scheduled to testify on the implementation of the Consumer Product Safety Improvement Act (CPSIA). Many issues have arisen as unintentional repercussions of this act that need to be brought to light.

Competitive edge: it seems apparent that this Improvement Act was put in place to slow manufacturing in China (and elsewhere) under the guise of child protection. Consideration was not made to distributors in the United States to allow existing inventory (including raw materials) to be sold moving it from saleable product to landfill in a short period of time. This pushed businesses in the U.S. to look for alternative vendors and sell at a lower margin when possible or to simply cancel orders losing income and profitability.

Product selection: we select products for our catalogs six to eight months in advance. Because companies were scrambling to have products tested where possible or were discontinuing products we were not able to fill our catalogs with as much product as in the past. Our catalogs are produced once a year and this limited selection will cost us sales.

Science: where is the Science behind the decisions made for this Improvement Act? Lead intake from these products is miniscule compared to everyday exposures and the harmful effects of phthalates (if any) are really an unknown. This puts us in a situation causing thousands of hours of extra labor and lost sales for an unknown. This really isn't about children's safety.

Service: Nasco has prided itself on quality and service since 1941. We have over \$260,000 in backorders due exclusively to lack of CPSIA documentation and have lost an immeasurable amount of sales due to discontinued products. Most products were discontinued not because lead or phthalate levels were high but because the cost of testing pushed companies to discontinue products.

Labeling: products now need to be labeled with a traceable date. Many products are too small for this and the added expense for other products creates unnecessary costs in the extremely rare chance of a recall.

Bottom line: we all want to sell products that are safe for everyone. A reasonable approach needs to be taken regarding the definition of "toy" vs a "teaching tool". Not only will school systems see a shortage of available teaching aids but due to the financial burden many companies face because of the expense of testing or of holding noncompliant inventory, businesses will fail, jobs will be lost, and tons of product will have to be destroyed creating an ecological nightmare. I appreciate your time in this matter and I hope you can understand the full impact of this "Improvement" Act as it now stands.

Stephen M. Richter  
Executive Vice President

*Nasco*  
901 Janesville Ave.  
Fort Atkinson, WI 53538  
Phone: 920-568-5514  
Fax: 920-568-5744  
email: srichter@enasco.com



September 4, 2009

The Honorable Henry Waxman  
Chairman

The Honorable Bobby Rush  
Subcommittee Chairman

House Energy and Commerce Committee  
2125 Rayburn House Office Building,  
Washington, DC 20515

The Honorable Joe Barton  
Ranking Member

The Honorable George Radanovich  
Subcommittee Ranking Member

House Energy and Commerce Committee  
2322A Rayburn House Office Building  
Washington, DC 20515

Dear Chairmen and Ranking Members:

I am writing in regard to the Committee hearing set for September 10, 2009 in which the Hon. Inez Tenenbaum, Chairman of the U.S. Consumer Product Safety Commission (CPSC), is scheduled to testify on the implementation of the Consumer Product Safety Improvement Act (CPSIA).

I am very disappointed that no small businesses impacted by the new law have been invited to share their experiences in testimony before the Committee. The business community has been actively calling for hearings since the passage of the CPSIA because of the draconian effects of the new law and our requests have drastically increased earlier this year when many unintended consequences became obvious for all to see. Our privately-owned business makes many educational products for schools and has an exemplary 25-year safety record because of our hard work to assure high quality and compliance with law. The innumerable, onerous provisions of the CPSIA have had a devastating impact on our ability to conduct business. We are now forced to consider dropping many products in our line because of the direct consequences of the CPSIA. This is a very regrettable situation as no one else is producing these kinds of product that make a genuine positive impact in the schooling of our children and especially special need children. These issues must be explored by the Committee based on the testimony of real companies suffering real pain.

The problems caused by the law are endless. At its core, the CPSIA overly broad definition of "children's products" swept in many products incapable of harming children from lead or phthalates. The CPSC itself has been hobbled by the CPSIA's strict new rules that prohibit risk assessment. The agency has no flexibility to exercise judgment and as a result, have issued impractical guidance and

unworkable regulations. In addition, the exemption process under the law is both very limited and very expensive. The severe penalties under the law are not scaring companies into compliance – they are shooing companies out of the market. Even the CPSC's own guidance to resale shops advises stores to consider the option to stop doing business in children's products.

The deck is stacked against small businesses under the CPSIA. Ironically, while crafters are left to puzzle over how to "ascertain" co-hort information on their products, the new law awards a freebie to large businesses who seek to test their own products. I have also seen that the CPSC has given itself an award for the outstanding work it has done in implementing the CPSC. How can that be possible in light of the overwhelming evidence to the contrary?

I passionately believe that the perspective of businesses like our company is essential to a complete picture of the problems caused by the CPSIA and its implementation.

Thank you for your consideration of this important matter.

Sincerely,

Etienne J. Veber  
President/CEO  
Learning Resources & Educational Insights  
380 N. Fairway Drive  
Vernon Hills, Illinois 60061  
(847) 573-8422  
[eveber@learningresources.com](mailto:eveber@learningresources.com)



September 8, 2009

The Honorable Henry Waxman  
Chairman

The Honorable Bobby Rush  
Subcommittee Chairman

House Energy and Commerce Committee  
2125 Rayburn House Office Building Washington, DC 20515

The Honorable Joe Barton  
Ranking Member

The Honorable George Radanovich  
Subcommittee Ranking Member

House Energy and Commerce Committee  
2322A Rayburn House Office Building  
Washington, DC 20515

Dear Chairmen and Ranking Members:

I am writing in regard to the Committee hearing set for September 10, 2009 in which the Hon. Inez Tenenbaum, Chairman of the U.S. Consumer Product Safety Commission (CPSC), is scheduled to testify on the implementation of the Consumer Product Safety Improvement Act (CPSIA). I am extremely disappointed that no small businesses impacted by the new law have been invited to share their experiences in testimony before the Committee. You are ignoring the business segment most adversely affected by this legislation. I have children at home, so I know the value of product safety, but I also feel that the laws that were in place previous to the CPSIA did an admirable job protecting my kids. The undue pressures you have put on many, many small businesses will not make the products we use any safer, it will only put financial strain on these companies and the people that work there. I ask that you reconsider your position and allow small companies to represent themselves at the Sept. 10 hearing as they are the ones most devastated by this legislation. Thank you for your consideration of this important matter.

Sincerely, Eric J. Toriumi  
Sr. Director - Marketing  
[etoriumi@learningresources.com](mailto:etoriumi@learningresources.com)



**COPERNICUS TOYS**

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September 4, 2009

The Honorable Henry Waxman  
Chairman

The Honorable Bobby Rush  
Subcommittee Chairman

House Energy and Commerce Committee  
2125 Rayburn House Office Building Washington, DC 20515

The Honorable Joe Barton  
Ranking Member

The Honorable George Radanovich  
Subcommittee Ranking Member

House Energy and Commerce Committee  
2322A Rayburn House Office Building  
Washington, DC 20515

Dear Chairmen and Ranking Members:

I am writing in regard to the Committee hearing set for September 10, 2009 in which the Hon. Inez Tenenbaum, Chairman of the U.S. Consumer Product Safety Commission (CPSC), is scheduled to testify on the implementation of the Consumer Product Safety Improvement Act (CPSIA).

I am both a small business owner and a parent, of course I want to know that the products intended for their use are safe; however, I am disappointed that the consequences for small businesses that CPSIA presents have not been addressed. This oversight of policy will affect the economy and limit consumer's choices. Small business owners should be invited to share their experiences before the Committee.

My small family business makes science and education toys and activity kits. We work to assure high quality and compliance with law. However, the innumerable, onerous provisions of the CPSIA have had a devastating impact on our ability to con-

duct business. It is both expensive and confusing. We are concerned that we may be missing a crucial part of compliance and our customers worry that they don't understand their part in the convoluted chain of responsible and prosecutable parties. We deal with many small specialty stores who support small businesses like ours and contribute greatly to their communities in this era of "big box" dominance. We may soon need to cease operations, furthering the dominance of a few large manufacturers and limiting consumer choice. These issues need to be explored by the Committee based on the testimony of real companies suffering real pain.

The confusion doesn't seem to be limited to those trying to comply with the law. The overly broad definition of "children's products" swept in many products incapable of harming children from lead or phthalates. The CPSC itself has been hobbled by the CPSIA's strict new rules that prohibit risk assessment. The agency has no flexibility to exercise judgment and as a result, have issued impractical guidance and unworkable regulations.

These unworkable regulations will have untold ripple effects through the economy and society. CPSC's own guidance to resale shops advises stores to consider the option to stop doing business in children's products! As a parent of young children, this suggestion baffles and angers me. I and many of my peers rely on resale not only for economic reasons, but to keep toys and baby items that are generally used for a limited window of time out of landfills. This suggestion undercuts both economic and environmental concerns of many people.

Small business has little chance to survive under this law. Ironically, we struggle to determine how to "ascertain" co-hort information on products and spend exorbitant amounts to test products, but the new law provides yet another advantage to large businesses: in-house testing. Again, both as a business owner and a consumer, this is outrageous! I strive to support small local businesses in all of my consumer life. I do not want to be left with only the options provided by big corporations—they do not support my values or provide me with the choices I want for myself and my children.

I enjoy operating my own business and am deeply concerned and saddened by the possibility that I may need to end this phase of my working life because a law that should be protecting my children is unintentionally only protecting big business. I strongly believe that the perspective of business people and consumers like me is essential to a complete picture of the problems caused by the CPSIA and its implementation. Thank you for your consideration of this important matter.

Sincerely,

Peggy Tobias  
Owner, Copernicus Toys  
[sales@copernicustoys.com](mailto:sales@copernicustoys.com)

# DAIGGER®

A. DAIGGER & COMPANY, INC.

Equipment and Supplies for Technology and Education

September 4, 2009

The Honorable Henry Waxman  
Chairman

The Honorable Bobby Rush  
Subcommittee Chairman

House Energy and Commerce Committee  
2125 Rayburn House Office Building Washington, DC 20515

The Honorable Joe Barton  
Ranking Member

The Honorable George Radanovich  
Subcommittee Ranking Member

House Energy and Commerce Committee  
2322A Rayburn House Office Building  
Washington, DC 20515

Dear Chairmen and Ranking Members:

I am writing to you as a concerned Small Business owner and operator. In many respects, I feel that we are under appreciated, and ignored, by policy-makers in Washington. The Committee hearing set for September 10, 2009 illustrates this perfectly. The Hon. Inez Tenenbaum, Chairman of the U.S. Consumer Product Safety Commission (CPSC), is scheduled to testify on the implementation of the Consumer Product Safety Improvement Act (CPSIA) and that she is currently the only witness scheduled.

I find it hard to believe that no Small Businesses impacted by the new law have been invited to share their experiences in testimony before the Committee. The business community has been actively calling for hearings since the passage of the CPSIA because of the impact this new law has had on business. This law is doing damage to real people and real companies, every day. It is destroying livelihoods and creating administrative burdens for law-abiding companies with excellent safety records. These new costs prevent companies from investing in job-creating new products and new lines.

Why, I wonder to myself, will you not listen to Small Business on this? Why are we once again being shut out of the process?

As you no doubt know by now, the problems caused by the law are myriad. The overly broad definition of "children's products" swept in many products incapable of harming children from lead or phthalates. The CPSC itself has been hobbled by the CPSIA's strict new rules that prohibit risk assessment. That's just plain bad public policy. The agency has no flexibility to exercise judgment and as a result, have issued impractical guidance and unworkable regulations. In addition, the exemption process under the law is both very limited and very expensive.

The deck is stacked against Small Business under the new law. Ironically, while crafters are left to puzzle over how to "ascertain" co-hort information on their products, the new law awards a freebie to Large Businesses who seek to test their own products. Small Businesses are shutting down, and cutting products (i.e. jobs) while Large Business is permitted to test their own

products? It is ironic that toy recalls by Large Business was partially the impetus behind this law being hastily passed in the first place and now they are allowed to test themselves.

I strongly believe that the perspective of businesses like our company is essential to a complete picture of the problems caused by the CPSIA and its implementation. This law is a boomerang and it is, sooner or later, going to head straight back at your Committee. Take the time to hear us out and perhaps you can avoid some of the damage being done in the real World.

Thank you for your consideration of this important matter.

Very truly yours,



James R. Woldenberg  
President



Sept. 4, 2009

The Honorable Henry Waxman  
Chairman

The Honorable Bobby Rush  
Subcommittee Chairman

House Energy and Commerce Committee  
2125 Rayburn House Office Building Washington, DC 20515

The Honorable Joe Barton  
Ranking Member

The Honorable George Radanovich  
Subcommittee Ranking Member

House Energy and Commerce Committee  
2322A Rayburn House Office Building  
Washington, DC 20515

Dear Chairmen and Ranking Members:

I am writing in response to the notice that there is a Committee hearing scheduled on Sept. 10, 2009, with only one witness on the docket to testify, Inez Tenenbaum. I am very angry that this hearing will not have any testimony from small businesses directly affected by the CPSIA law. I am very disappointed that not one voice will be heard from the thousands of small businesses who have already closed their doors and who will be forced to close if the Committee and the CPSC doesn't consider the real impact of CPSIA on small businesses. This is unacceptable.

Our businesses community has been requesting hearings since this law was passed over a year ago to find these hearings scheduled, postponed, and cancelled over and over again. It is essential that the Committee hear the reality of this poorly written law on children's product industry from manufacturers, retailers, and resellers who are struggling to comply with the law but also have been requesting risk based assessments for children's products.

My store represents over 80 small businesses who will be forced to close their doors once the CPSIA stay is lifted in February and cannot afford to have their hand made products tested. We have already lost a handful of suppliers who cannot modify their business model to accept the costs and time involved with the tracking label provision of the law. This includes hand knit baby sweaters, felted wool hats, and other products made from the exempted product list. These perfectly safe products are now off the market and these small businesses are no longer able to legally sell their products simply due to confusion and lack of instruction for implementation of the regulations. In addition, the recent announcement that Mattel now has authority to regulate their own products and has received exemption from the stringent regulations of the law is beyond frustrating for many law abiding businesses.

I strongly feel the Committee needs to hear from voices beyond the representation of the CPSC and listen to the consumers, manufacturers, and resellers who can speak to how the implementation and reality of CPSIA has already closed businesses and will continue to devastate the US economy more than removing a few products off the shelf.

Sincerely,

Marianne Mullen  
Owner, Polkadot Patch Boutique  
[marianne@polkadotpatch.com](mailto:marianne@polkadotpatch.com)  
802-476-4012

Tel (800) 682-1665  
(609) 397-6300  
Fax (609) 397-6302  
info@getreadykids.com

Get Ready, Inc.  
1432 Route 179, #C3  
Lambertville, NJ 08530

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September 4, 2009

The Honorable Henry Waxman  
Chairman

The Honorable Bobby Rush  
Subcommittee Chairman

House Energy and Commerce Committee  
2125 Rayburn House Office Building  
Washington, DC 20515

The Honorable Joe Barton  
Ranking Member

The Honorable George Radanovich  
Subcommittee Ranking Member

House Energy and Commerce Committee  
2322A Rayburn House Office Building  
Washington, DC 20515

Dear Chairmen and Ranking Members:

I learned today that the Committee has set a hearing on the CPSIA for September 10, 2009, in which the only witness scheduled to testify is CPSC Chairman Tenenbaum.

Chairman Tenenbaum's testimony is certainly very important for you to hear. However, CPSIA's far reaching implications for the business community dictate that other testimony must also be heard.

Manufacturers, importers, retailers, distributors, and consumers (including schools, libraries, churches, etc.) of children's products are struggling to comply with this law while realizing little, if anything, in the way of improved

product safety. Among the affected groups, small business is arguably the most severely impacted.

Small businesses have a vital stake in ensuring that children's products are safe and appropriate, and also fill important niches in the market by providing innovative, educational and functional products for children which would not otherwise be available. Many of these products do not lend themselves to mass markets or mass production on a scale that is even remotely possible under the scenario imposed by CPSIA.

However well-intentioned the CPSIA act was when passed, the unintended consequences and problems implementing the act are, by now, well documented. Many issues with the law need to be addressed both for the sake of the small business community and also in the interest of children, who stand to lose access to products that meet their educational, physical and special needs.

Testimony of small business is essential to your hearing. I am writing to request that you invite small business testimony which has been offered to the committee.

Sincerely,

John Haug  
General Manager  
[john@getreadykids.com](mailto:john@getreadykids.com)



9/4/2009

The Honorable Henry Waxman  
Chairman

The Honorable Bobby Rush  
Subcommittee Chairman

House Energy and Commerce Committee  
2125 Rayburn House Office Building Washington, DC 20515

The Honorable Joe Barton  
Ranking Member

The Honorable George Radanovich  
Subcommittee Ranking Member

House Energy and Commerce Committee  
2322A Rayburn House Office Building  
Washington, DC 20515

Dear Chairmen and Ranking Members:

It has been brought to my attention that a Committee hearing has been set for September 10, 2009 concerning the implementation of the Consumer Product Safety Improvement Act (CPSIA). It has also been brought to my attention that ONLY one witness, Hon. Inez Tenenbaum, will be called to discuss CPSIA.

I find it difficult to understand how the business communities impacted by this law will not be given the opportunity to share their concerns with this Committee.

The provisions of this law are far reaching and impact products incapable of harming children from lead or phthalates. In addition, passing of this law will give an unfair advantage to larger companies who have the means to absorb these excessive costs driven by the exemption procedures.

Without the testimony of small businesses impacted by this law, how does this committee expect to arrive at a fair decision? The spirit of this law is to protect individuals from things which can bring harm, however the law is now written in a way that impacts those things which bring no harm...how is this fair?

Without the perspective of small businesses you will never arrive at a complete picture of the problems caused by the CPSIA and its implementation. Without a complete picture you will never arrive at a fair and equitable decision. Please include small business representation in your committee hearings. Thank you for your consideration of this important matter.

Sincerely,

A handwritten signature in black ink, appearing to read "Jamie Devin". The signature is written in a cursive style with a large, looping initial "J".

Jamie Devin  
Marketing Manager  
Jdevin@heatsci.com



September 4, 2009

House Energy and Commerce Committee  
2322A Rayburn House Office Building  
Washington, DC 20515

The Honorable Henry Waxman Chairman	The Honorable Bobby Rush Subcommittee Chairman
The Honorable Joe Barton Ranking Member	The Honorable George Radanovich Subcommittee Ranking Member

Re: Format of the House Subcommittee on Commerce, Trade, and Consumer Protection Hearing, "Consumer Product Safety Commission Oversight: Current Issues and a Vision for the Future", scheduled for Thursday, September 10

Dear Chairmen and Ranking Members:

We are writing in regard to the subcommittee hearing set for September 10, 2009, the first Commerce Committee hearing on consumer product safety since the CPSIA was passed over a year ago. We are very disappointed to learn that the committee will not be taking this opportunity to hear from any small businesses affected by the CPSIA. Indeed, we have learned that CPSC Chair Tenenbaum will be the only person invited to testify.

While we have full faith in the abilities of Ms. Tenenbaum and believe she is working to apply common sense interpretations to the CPSIA, we do not believe that she can represent the full scope of the CPSIA's impact on responsible American small businesses. Nor do we believe that the unintended consequences of the CPSIA can be solved through the CPSC's rulemaking. A technical correction is required, and we would like the opportunity to tell your committee why.

Our businesses have been burdened by a law designed to fix a problem created by irresponsible multi-national corporations such as Mattel. The small manufacturers, crafters, and retailers represented by our alliance have impeccable safety records, yet we are burdened by excessive compliance costs while Mattel has once again been trusted to police itself.

Now is the time for Congress to hear the voices of small businesses. Now is the time to show that laws can be written for the common good, not just for the interests of large, well-connected corporations such as Mattel. Now is the time to invite small businesses, including a representative of our alliance, to speak truth to Congress about how the CPSIA is devastating our businesses and our livelihoods.

As parents, consumers and small business owners, we all believe that children's products should be free of toxins and safe for our children. We are in business due to our sincere desire to put forth quality products. Unfortunately, the CPSIA has made this endeavor much more difficult than it should be.

Please, help us fix the CPSIA. Help us continue to provide unique clothes and playthings for America's children. Please, invite us to testify.

Respectfully,

The Handmade Toy Alliance

Contact information and a listing of all 382 business members of the Handmade Toy Alliance is available at <http://www.handmadetoyalliance.org/members-of-the-handmade-toy-alliance>

Sincerely,

The Handmade Toy Alliance  
[savehandmadetoys@gmail.com](mailto:savehandmadetoys@gmail.com)  
[www.handmadetoyalliance.org](http://www.handmadetoyalliance.org)

Board members:

Cecilia Leibovitz, Craftsbury Kids, VT  
Jill Chuckas, Crafty Baby, CT  
Jolie Fay, Skiping Hippos, OR  
Rob Wilson, Challenge & Fun, MA  
Kate Glynn, A Child's Garden, MA

Dan Marshall, Peapods Natural Toys, MN  
Mary Newell, Terrapin Toys, OR  
Heather Flottmann, Lilliputians, NY  
John Greco, Greco Woodcrafting, NJ



September 4, 2009

The Honorable Henry Waxman  
Chairman

The Honorable Bobby Rush  
Subcommittee Chairman

House Energy and Commerce Committee  
2125 Rayburn House Office Building  
Washington, DC 20515

The Honorable Joe Barton  
Ranking Member

The Honorable George Radanovich  
Subcommittee Ranking Member

House Energy and Commerce Committee  
2322A Rayburn House Office Building  
Washington, DC 20515

Dear Chairmen and Ranking Members:

I am writing in regard to the Committee hearing set for September 10, 2009 in which the Hon. Inez Tenenbaum, Chairman of the U.S. Consumer Product Safety Commission (CPSC), is scheduled to testify on the implementation of the Consumer Product Safety Improvement Act (CPSIA).

I am highly disappointed that no small businesses impacted by the new law have been invited to share their experiences in testimony before the Committee. The business community has been actively calling for hearings since the passage of the CPSIA because of the draconian effects of the new law. I am speaking on behalf of over 500 franchise business owners who own resale businesses – Once Upon A Child® and Play It Again Sports®.

The problems caused by the law are myriad. The overly broad definition of “children’s products” swept in many products incapable of harming children from lead or phthalates. The CPSC has no flexibility to exercise judgment and as a result, have issued highly impractical guidelines. The CPSC has stated that resale stores such as ours, as well as Goodwill, the Salvation Army, ARC, Church organizations, Garage sellers & consignment stores are not required to test products, but we are liable if those products with banned substances are sold. The CPSC has attempted to provide more detailed guidance, of which, informs resale stores not to sell items such as jeans that have zippers or snaps. They are simply advising resale stores to consider no longer doing business in children’s products.

THE WINMARK FAMILY OF BRANDS - Music Go Round • Once Upon A Child • Plato's Closet • Play It Again Sports  
Winmark Capital Corporation • Winmark Business Solutions • Wirth Business Credit

605 Highway 169 North, Suite 400, Minneapolis, MN 55441  
Phone: 763/520-8500 Fax: 763/520-8410  
[www.winmarkcorporation.com](http://www.winmarkcorporation.com)



Last year alone, our brands serviced over 7 million parents. These parents are thrilled that they have a value-oriented business to turn to in this turbulent economy, but are very confused as to what is safe for their children to play with – or even wear.

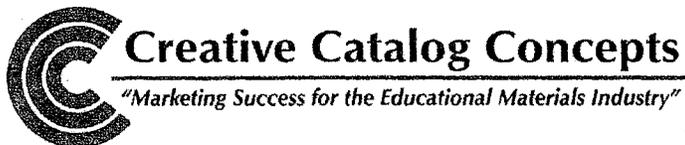
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Sincerely,

Susan Baustian  
Director, Once Upon A Child

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*I am disappointed that no small businesses impacted by the new law have been invited to share their experiences in testimony before the Committee. It is impossible for small businesses to understand the regulations because they seem to change daily. In the last 10 months, CPSC has e-mailed me 103 messages on CPSIA regulations. The most recent message contains 6 updates in 18 pages. To describe CPSIA as overwhelming is a huge understatement. While the regulations become more fine tuned and complex, it is not obvious how many of the recommended procedures and tracking mechanisms will reduce injury or death to children. What is clear is that compliance is very expensive for small businesses.*

In the School Supplies industry, we have provided safe products for children's classrooms for decades. Many of us are former teachers who started businesses to make a difference in the classroom. Child safety and development are paramount to us. It would be especially insightful for the Committee to hear from Rick Woldenberg from Learning Resources. Rick has been following CPSIA legislation for over a year and can clearly explain the unfair burdens the legislation places on small businesses. Please open the September 10, 2009 Committee meeting to all the stakeholders.

Sincerely,

James H. Rice  
CEO

2745 Rebecca Lane, Orange City, FL 32763 • 386-774-8815 • 386-774-9220 (Fax) • Dealer Sales: 1-800-260-1353

www.creativecatalogs.com • Email: [catalogs@creativecatalogs.com](mailto:catalogs@creativecatalogs.com) •  www.edumart.com



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Our family business makes educational products for schools and has an exemplary 10-year safety record because of our hard work to assure high quality and compliance with law. The provisions of the CPSIA have had a devastating impact on our ability to conduct business. These issues need to be explored by the Committee based on the testimony of real companies suffering real pain. I am very disappointed that no small businesses impacted by the new law have been invited to share their experiences in testimony before the Committee. The business community has been actively calling for hearings since the passage of the CPSIA.

The problems caused by the law are myriad. The overly broad definition of "children's products" swept in many products incapable of harming children from lead or phthalates. The CPSC itself has been hobbled by the CPSIA's strict new rules that prohibit risk assessment. The agency has no flexibility to exercise judgment and as a result, have issued impractical guidance and unworkable regulations. In addition, the exemption process under the law is both very limited and very expensive.

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I strongly believe that the perspective of businesses like our company is essential to a complete picture of the problems caused by the CPSIA and its implementation. Thank you for your consideration of this important matter.

Sincerely,

**Lana Sheets**

Lana Sheets

Beacon Ridge, 20951 Baker Road, Gays Mills WI 54631

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The Hon. Inez Tenenbaum, Chairman of the U.S. Consumer Product Safety Commission (CPSC), is scheduled to testify on the implementation of the Consumer Product Safety Improvement Act (CPSIA).

I am very confused about why we (small business owners) have not been allowed to express the damage being inflicted on us by this new law. It is unfathomable that we are not being allowed to present our side of this issue.

We have continually requested a venue to present the hardships that have been generated from the poorly thought out implementation of the CPSIA ruling. We have NOT been heard, nor addressed. In fact, it's been 11 months and this is the 1st hearing.

The effects of this law has caused severe financial problems in my small business. I have been forced to file personal bankruptcy because I can't afford the "testing" and lost a very large contract for our elementary science kits. These are expressly designed to be used with a parent present, yet there is no exemption for such items.

Your committee needs to hear the people being hurt by this law. My products have no lead and are not going to be eaten by a 3rd grader! You have been overly broad in your assesment of risks.

You can't scare people into compliance with the penalties. The result will be no market choice, because small businesses will stop marketing their products due to the high cost of testing.

Thank you for your attention to this,

Sincerely,  
Teresa Wirtz,  
Small Business Owner



September 4, 2009

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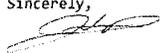
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I strongly believe that the perspective of businesses like our company is essential to a complete picture of the problems caused by the CPSIA and its implementation. Thank you for your consideration of this important matter.

Sincerely,

  
Julio Plutt, President

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Visit our website at: [www.brightproducts.com](http://www.brightproducts.com)



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Sincerely,

A handwritten signature in black ink, appearing to read "Julio Plutt".

Julio Plutt, President

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**WALTHERS**



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J. Philip Walthers  
President

JPW/riz

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I strongly believe that the perspective of businesses like our company is essential to a complete picture of the problems caused by the CPSIA and its implementation. Thank you for your consideration of this important matter.

Sincerely,

J. Philip Walthers  
President

JPW/riz

**Model Railroad Equipment Since 1932**

Wm. K. Walthers, Inc. Mailing Address: P.O. Box 3039 Milwaukee, WI 53201-3039  
Corporate Headquarters: 5601 W. Floist Ave. Milwaukee, WI 53218  
414-527-0770 Fax: 414-527-4423 www.walters.com

**WALTHERS**

September 4, 2009

The Honorable Joe Barton  
Ranking MemberHouse Energy and Commerce Committee  
2322A Rayburn House Office Building  
Washington, DC 20515

Dear Representative Barton:

I am writing in regard to the Committee hearing set for September 10, 2009 in which the Hon. Inez Tenenbaum, Chairman of the U.S. Consumer Product Safety Commission (CPSC), is scheduled to testify on the implementation of the Consumer Product Safety Improvement Act (CPSIA).

It is critical that small businesses be given a voice in the discussion of how to implement this law. We are a family business selling toys and hobby products for over 77 years. We have an unblemished safety record over all of these years. This law has already created huge additional expenses caused by unnecessary testing, excessive paperwork, and the destruction of products that are NOT dangerous to children.

The innumerable, onerous provisions of the CPSIA have had a devastating impact on our ability to conduct business. These issues need to be explored by the Committee based on the testimony of real companies suffering real pain.

The problems caused by the law are myriad. The overly broad definition of "children's products" swept in many products incapable of harming children from lead or phthalates. The CPSC itself has been hobbled by the CPSIA's strict new rules that prohibit risk assessment. The agency has no flexibility to exercise judgment and as a result, have issued impractical guidance and unworkable regulations. In addition, the exemption process under the law is both very limited and very expensive.

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J. Philip Walthers  
President

JPW/riz

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**WALTHERS**



September 4, 2009

The Honorable George Radanovich  
Subcommittee Ranking Member

House Energy and Commerce Committee  
2322A Rayburn House Office Building  
Washington, DC 20515

Dear Representative Radanovich:

I am writing in regard to the Committee hearing set for September 10, 2009 in which the Hon. Inez Tenenbaum, Chairman of the U.S. Consumer Product Safety Commission (CPSC), is scheduled to testify on the implementation of the Consumer Product Safety Improvement Act (CPSIA).

It is critical that small businesses be given a voice in the discussion of how to implement this law. We are a family business selling toys and hobby products for over 77 years. We have an unblemished safety record over all of these years. This law has already created huge additional expenses caused by unnecessary testing, excessive paperwork, and the destruction of products that are NOT dangerous to children.

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Sincerely,

J. Philip Walthers  
President

JPW/riz

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251 Snelling Avenue South  
St. Paul, MN 55105  
www.peapods.com

September 4, 2009

The Honorable Henry Waxman  
Chairman

The Honorable Bobby Rush  
Subcommittee Chairman

The Honorable Joe Barton  
Ranking Member

The Honorable George Radanovich  
Subcommittee Ranking Member

House Energy and Commerce Committee  
2125 Rayburn House Office Building  
Washington, DC 20515

Dear Chairmen and Ranking Members:

We are extremely disappointed to learn that the House Commerce Committee will not be inviting any small business representatives to testify at the upcoming hearing on consumer product safety set for September 10, 2009.

As the owners of a specialty toy and baby store, we are seeing many of our small suppliers exit the market, reduce their offerings, or raise their prices as a result of the CPSIA. We do not believe that the costs they are bearing have improved product safety, but we certainly believe that the CPSIA has bolstered the fortunes of large companies like Wal-Mart and Mattel.

It is time for you to listen to the small businesses who are being unnecessarily hurt by the CPSIA. Please invite small businesses to tell you their stories.

Thanks and best wishes,

Dan Marshall and Millie Adelsheim  
Peapods, Inc.  
251 Snelling Ave S  
St. Paul, MN 55105

# Learning Express

315 Route 206 #903  
Hillsborough, NJ 08844  
(908) 431-7869

And

3150 Route 22, #16  
Branchburg, NJ 08876  
(908) 725-7869

<date>

The Honorable Henry Waxman  
Chairman

The Honorable Bobby Rush  
Subcommittee Chairman

House Energy and Commerce Committee  
2125 Rayburn House Office Building  
Washington, DC 20515

The Honorable Joe Barton  
Ranking Member

The Honorable George Radanovich  
Subcommittee Ranking Member

House Energy and Commerce Committee  
2322A Rayburn House Office Building  
Washington, DC 20515

Dear Chairmen and Ranking Members:

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I am writing in regard to the Committee hearing set for September 10, 2009 in which the Hon. Inez Tenenbaum, Chairman of the U.S. Consumer Product Safety Commission (CPSC), is scheduled to testify on the implementation of the Consumer Product Safety Improvement Act (CPSIA).

I am very disappointed that no small businesses impacted by the new law have been invited to share their experiences in testimony before the Committee. The business community has been actively calling for hearings since the passage of the CPSIA because of the draconian effects of the new law. Our family business makes educational products for schools and has an exemplary 25-year safety record because of our hard work to assure high quality and compliance with law. Yet the innumerable, onerous provisions of the CPSIA have had a devastating impact on our ability to conduct business. These issues need to be explored by the Committee based on the testimony of real companies suffering real pain.

I own two struggling toy stores. In February, I requested the assistance of the CPSC, the Small Business Administration and my local representatives to help me even understand the letter or spirit of the law. Not only did the law require legal expertise, but expertise in organic chemistry, statistics and various other physical and chemical sciences. Even reading the CPSC's vague advice provided no meaningful help.

It still seems that to follow the law that a small store must undergo several million dollars worth of independent testing and have thousands of files of printed paperwork on file. And it's unclear whom has the right to demand this information. And as rulings have yet to be made, we can only guess if we are doing the right thing.

We are calling this bill the WalMart and Mattel support bill. Only WalMart as a retailer can afford to keep these records and develop custom computer systems to track this information. Only Mattel (which seems to have some sort of special exemption) can seem to continue manufacturing toys. The result will be much like the marketplace in Russia....one company-one choice.

We hear how small businesses are the nation's backbone and the government is now guaranteeing that only the largest of the large businesses can survive in the toy industry. It is not the small businesses who have had the problem with safety...the small business rides on it's reputation. People die in large box stores, and people will still shop in them.

We stand behind the intent of the law, but the implementation will neither enhance safety of our children, nor support their development. The big box stores of the world are looking at children as numbers. We know their names. Who's more likely to consider safety?

I strongly believe that the perspective of businesses like our company is essential to a complete picture of the problems caused by the CPSIA and its implementation. Thank you for your consideration of this important matter.

Sincerely,

Rick Grossman  
Owner  
[Rickg.learningexpress@verizon.com](mailto:Rickg.learningexpress@verizon.com)



1110 W13125 Washington Drive  
Suite A  
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Toll Free: 866-730-0899  
Fax: 262-512-2944  
www.littlec.com

August 4, 2009

The Honorable Henry Waxman  
Chairman

The Honorable Bobby Rush  
Subcommittee Chairman

House Energy and Commerce Committee  
2125 Rayburn House Office Building, Washington DC 20515

The Honorable Joe Barton  
Ranking Member

The Honorable George Radanovich  
Subcommittee Ranking Member

House Energy and Commerce Committee  
2322A Rayburn House Office Building  
Washington, DC 20515

Dear Chairmen and Ranking Members:

I am writing in regard to the Committee hearing set for September 10, 2009 in which the Hon. Inez Tenenbaum, Chairman of the U.S. Consumer Product Safety Commission (CPSC), is scheduled to testify on the implementation of the Consumer Product Safety Improvement Act (CPSIA).

I am extremely disappointed and surprised that no small businesses impacted by the new law have been invited to share their experiences in testimony before the Committee. The small business owner who has worked diligently for many years to produce safe toys and has conformed to all the testing requirements, both voluntary and mandatory, through third party labs has been thrown in to a turmoil. The law has had so many interpretations over the last months that no one is able to determine how and what needs to be done.

In our small companies products are made in small quantities and therefore many common components are used in order to keep product costs down. Under the new law we now have to treat these common components as entirely different entities for **each** toy they are a part of. We have to test some of our components 25 and 30 times, at cost of several hundred dollars **each** time, even though they have already been documented as safe by an independent testing lab. This is just one of several issues in this law that could be made simpler and less expensive

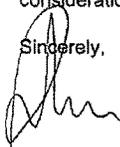
without being **any** less safe. Most of these problems have to do with a lack of knowledge and understanding of actual manufacturing processes and need to be addressed to prevent small businesses from failing.

Small business in the children's industry has been actively calling for hearings since the passage of the CPSIA because of the issues that threaten our very existence and the availability of important playthings for our children. Issues that, if addressed, could allow us to survive this unbelievably difficult time and continue to make toys that would be as safe as the Congress intended. Companies in the small business segment have an excellent record of safety and are asking to be heard so we can continue to make excellent products. These issues need to be explored by the Committee based on the testimony of real companies suffering real pain.

The deck is stacked against small business under the new law. Ironically, while we are left to puzzle over how to "ascertain" co-hort information on products, the new law awards a freebie to large businesses who seek to test their own products.

I strongly believe that the perspective of businesses like our company is essential to a complete picture of the problems caused by the CPSIA and its implementation. Thank you for your consideration of this important matter.

Sincerely,



Peter F. Reynolds  
President  
The Little Little Toy Co., LLC  
peter@littletc.com

## Creativity for Kids

September 4, 2009

The Honorable Henry Waxman  
Chairman

The Honorable Bobby Rush  
Subcommittee Chairman

House Energy and Commerce Committee  
2125 Rayburn House Office Building/Washington, DC 20515

The Honorable Joe Barton  
Ranking Member

The Honorable George Radanovich  
Subcommittee Ranking Member

House Energy and Commerce Committee  
2322A Rayburn House Office Building  
Washington, DC 20515

Dear Chairmen and Ranking Members:

I am writing in regard to the Committee hearing set for September 10, 2009 in which the Hon. Inez Tenenbaum, Chairman of the U.S. Consumer Product Safety Commission (CPSC), is scheduled to testify on the implementation of the Consumer Product Safety Improvement Act (CPSIA).

I am quite surprised and disappointed that no small businesses impacted by the new law have been invited to share their experiences in testimony before the Committee. How can this be? The business community has been actively calling for hearings since the passage of the CPSIA. In my home state of Ohio we have been plagued by waves of economic turmoil and now there is not even a small business member asked to testify? Our Cleveland based business makes childrens craft and activity products and has an exemplary safety record because of our hard work to assure high quality and compliance with law. Yet the innumerable, onerous provisions of the CPSIA have had a devastating impact on our ability to conduct business. Be understand, we believe solidly in the importance of product safety, but please take the time to listen to us as those who know it best.

I strongly believe that the perspective of businesses like our company is essential to a complete picture of the problems caused by the CPSIA and its implementation. Thank you for your consideration of this important matter.

Sincerely,

Jamie C Gallagher

CEO, Faber-Castell USA

Hello

I hope that you still make an effort to talk to some of us who work in the trenches, before making anymore misguided rulings regarding child and toy safety. As a small toy shop owner, I have been so discouraged by the lack of response from my congressmen and senators. NO ONE IS LISTENING!

May I give you just a couple of examples of bad things that have happened as a result of this law. A wooden wagon maker in Berlin Ohio... a group of Amish folks... have been forced to pay ridiculous amounts of money to have each of the components of their individual styles tested... this is something they cannot afford to do... they have simply cut back on the number of items available, raised their prices, and have probably had to reduce their small work force. WHAT ARE YOU PEOPLE THINKING? BRIO wooden trains, from Sweden are not available in the U.S. this year, because, they do not want to spend the additional money for testing of each SKU (as required by the law) when they already meet the standards of the EU. We have seen the same thing with a number of other companies.

AND YET one of the biggest culprits in causing this overreaction Mattel, has been allowed to do their own testing and in their own labs... while small companies like the Berlin Ohio people have to pay to the point of going out of business.

PLEASE reconsider the age of childhood as noted in the law. 12 year old children are not the same as infants, toddlers and pre-school ages.... This law uses a Sherman Tank to take care of what could have been done with a broom. Stop acting based on the rantings of a few well-intentioned, but over zealous people. Moderation .., Moderation ... deep breath.... think about what you are doing and fix this thing!

Carolyn Meyer  
Blue Turtle Toys  
2314 Far Hills Avenue  
Dayton OH 45419  
937 294-6900  
Member of *ASTRA* and *The Good Toy Group*

**All the Numbers**  
**Eco-Conscious Clothing for your little one, Handmade in Boston, MA**

September 4, 2009

The Honorable Henry Waxman  
Chairman

The Honorable Bobby Rush  
Subcommittee Chairman

House Energy and Commerce Committee  
2125 Rayburn House Office Building Washington, DC 20515

The Honorable Joe Barton  
Ranking Member

The Honorable George Radanovich  
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House Energy and Commerce Committee  
2322A Rayburn House Office Building  
Washington, DC 20515

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I am writing in regard to the Committee hearing set for September 10, 2009 in which the Hon. Inez Tenenbaum, Chairman of the U.S. Consumer Product Safety Commission (CPSC), is scheduled to testify on the implementation of the Consumer Product Safety Improvement Act (CPSIA).

I am very disappointed that no small businesses impacted by the new law have been invited to share their experiences in testimony before the Committee. The business community has been actively calling for hearings since the passage of the CPSIA because of the draconian effects of the new law. My children's clothing business has been put under real stress due to the unforeseen effects of this law, and these issues need to be explored by the Committee based on the testimony of real companies suffering real pain.

The problems caused by the law are myriad. The overly broad definition of "children's products" swept in many products incapable of harming children from lead or phthalates. The CPSC itself has been hobbled by the CPSIA's strict new rules that prohibit risk assessment. The agency has no flexibility to exercise judgment and as a result, have issued impractical guidance and unworkable regulations. In addition, the exemption process under the law is both very limited and very expensive.

The severe penalties under the law are not scaring companies into compliance – they are shooting companies out of the market. Even the CPSC's own guidance to resale shops advises stores to consider the option to stop doing business in children's products.

The deck is stacked against small business under the new law. Ironically, while crafters are left to puzzle over how to "ascertain" co-hort information on their products, the new law

awards a freebie to large businesses who seek to test their own products.

I strongly believe that the perspective of businesses like our company is essential to a complete picture of the problems caused by the CPSIA and its implementation. Thank you for your consideration of this important matter.

Sincerely,

Kiki Fluhr  
Founder and Creative Director, All the Numbers, Eco-Conscious Clothing  
[allthenumbers@live.com](mailto:allthenumbers@live.com)  
617-328-7449

<http://www.allthenumbers.etsy.com>  
<http://www.TheMeasure.etsy.com>  
<http://www.bostonhandmade.blogspot.com>



Catherine (Cathy) Frazier  
LuvUPumkin.com  
2349 Apache Street  
Mendota Heights MN 55120

August 4, 2009

The Honorable Henry Waxman  
Chairman

The Honorable Bobby Rush  
Subcommittee Chairman

House Energy and Commerce Committee  
2125 Rayburn House Office Building Washington, DC 20515

The Honorable Joe Barton  
Ranking Member

The Honorable George Radanovich  
Subcommittee Ranking Member

House Energy and Commerce Committee  
2322A Rayburn House Office Building  
Washington, DC 20515

Dear Chairmen and Ranking Members:

I am writing in regard to the Committee hearing set for September 10, 2009 in which the Hon. Inez Tenenbaum, Chairman of the U.S. Consumer Product Safety Commission (CPSC), is scheduled to testify on the implementation of the Consumer Product Safety Improvement Act (CPSIA).

I am very disappointed that no small businesses – like our family-run business - impacted by the new law have been invited to share their experiences in testimony before the Committee. The business community has been actively calling for hearings since the passage of the CPSIA because of the draconian effects of the new law. Before CPSIA< our family business used to make wooden doll cradles and high chairs as well as other wooden toys. We also made baby diaper cakes using various items from a variety of vendors – and we sewed the baby blankets for the baby diaper cakes ourselves. This business was growing and we were hoping to hire a worker or two to help us out.

Due to the innumerable, onerous provisions of the CPSIA, we have ceased all production and only do resell at this time. The CPSIA has had a devastating impact on our ability to conduct business – people want our homemade wooden toys, but we cannot test each and every one of our toys and baby diaper cakes. In our business model, we do a lot of specialty orders for the toys and diaper cakes, so doing a large production run does not make business sense. We follow Just-in-Time (JIT) business practices for the production part of our business. We even use milk paint instead of acrylic as it is ‘suppose’ to be safer for children – but it’s more dangerous for my husband who paints our wooden toys.

NOTE: These are **Made in the USA** toys!

Issues like ours need to be explored by the Committee based on the testimony of real companies suffering real pain.

The problems caused by the law are myriad. The overly broad definition of “children’s products” swept in many products incapable of harming children from lead or phthalates. The CPSC itself has been hobbled by the CPSIA’s strict new rules that prohibit risk assessment. The agency has no flexibility to exercise judgment and as a result, have issued impractical guidance and unworkable regulations. In addition, the exemption process under the law is both very limited and very expensive.

The severe penalties under the law are not scaring companies into compliance – they are shooshing companies out of the market. Even the CPSC’s own guidance to resale shops advises stores to consider the option to stop doing business in children’s products.

The deck is stacked against small business under the new law. Ironically, while crafters are left to puzzle over how to “ascertain” co-hort information on their products, the new law awards a freebie to large businesses who seek to test their own products.

I strongly believe that the perspective of businesses like our company, LuvUPumkin.com, is essential for a complete picture of the problems caused by the CPSIA and its implementation. Thank you for your consideration of this important matter.

Sincerely,

Catherine Frazier, CEMBA – Carlson School of Management Executive MBA 2005  
CEO/Foundress  
[cathy@luvupumkin.com](mailto:cathy@luvupumkin.com)  
651-216-5579

**Andrea Friedman Sales**  
15 Taylor Road  
New Milford, CT 06776  
Ph: 860 350-2235  
Fax: 860 350-2434  
Andrea57@charter.net

Sept. 7, 2009

**The Honorable Henry Waxman**  
Chairman

**The Honorable Bobby Rush**  
Subcommittee Chairman

**Dear Chairman and Ranking Members:** I am writing in regard to the Committee Hearing set for Sept. 10 in which the Hon. Inez Tenenbaum is scheduled to testify on the the implementation of the CPSIA.

I am distubed that no representative of small businesses has been invited to share their testimony before the committee. Family businesses making educational products will be severely affected by this draconian law as well as many other small vendors.

The overly broad definition of "childrens products" has included many products that are not capable of harming children from lead or pthalates. The severe penalties are causing companies out of the market and they will no longer be able to make childrens products.

I believe you should allow small businesses to testify on their outlook of this important matter.

Sincerely,

**Andrea Friedman**  
Independent Sales Rep  
Andrea57@charter.net

Andrea Friedman Sales  
15 Taylor Road  
New Milford, CT 06776  
Ph: 860 350-2235  
Fax: 860 350-2434  
Andrea57@charter.net

Sept. 7, 2009

The Honorable Joe Barton  
Ranking Member

The Honorable George Radanovich  
Subcommittee Ranking Member

Dear Chairman and Ranking Members:

I am writing in regard to the Committee Hearing set for Sept. 10 in which the Hon. Inez Tenenbaum is scheduled to testify on the the implementation of the CPSIA.

I am disturbed that no representative of small businesses has been invited to share their testimony before the committee. Family businesses making educational products will be severely affected by this draconian law as well as many other small vendors.

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Sincerely,

Andrea Friedman  
Independent Sales Rep  
Andrea57@charter.net

**Cannon Sports, Inc.**

United States Postal Service Mailing Address:  
 Executive Offices & Warehouse Ship to Address:  
 Telephone: 1.800.223.0064 extension 133  
 Office Fax: 1.800.388.1993  
 Personal office e-mail address: [jon@cannonsports.com](mailto:jon@cannonsports.com)  
 company e-mail address: [csi@cannonsports.com](mailto:csi@cannonsports.com)  
 Web site: <http://www.cannonsports.com>  
**Jon Warner**

**CSI****CSI****CSI**

PO Box 11179, Burbank, California, U.S.A., 91510-1179  
 11614 Pendleton Street, California, U.S.A., 91352-2501  
 Local: 1.818.683.1000  
 Personal computer fax: 1.818.683.1015  
 iPhone: 1.818.749.9553

Your personal web site for discount pricing: [www.csivip.com](http://www.csivip.com)  
**President & CEO**

Friday, September 4, 2009

"Dear Chairmen and Ranking Members:

I am writing in regard to the Committee hearing set for September 10, 2009 in which the Hon. Inez Tenenbaum, Chairman of the U.S. Consumer Product Safety Commission (CPSC), is scheduled to testify on the implementation of the Consumer Product Safety Improvement Act (CPSIA).

I am very disappointed that no small businesses impacted by the new law have been invited to share their experiences in testimony before the Committee. The business community has been actively calling for hearings since the passage of the CPSIA because of the draconian effects of the new law. Our family business makes educational products for schools and has an exemplary 25-year safety record because of our hard work to assure high quality and compliance with law. Yet the innumerable, onerous provisions of the CPSIA have had a devastating impact on our ability to conduct business. These issues need to be explored by the Committee based on the testimony of real companies suffering real pain.

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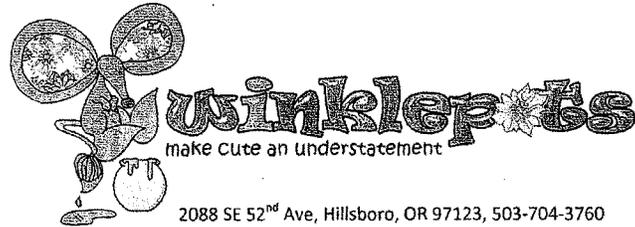
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I strongly believe that the perspective of businesses like our company is essential to a complete picture of the problems caused by the CPSIA and its implementation. Thank you for your consideration of this important matter.

Cordially,  
**Cannon Sports, Inc.**

  
 Jon Warner



September 5, 2009

Dear Chairmen and Ranking Members,

I'm sincerely disappointed that during the upcoming hearings, scheduled on 9/10/09, you have only asked one representative to speak on behalf of everyone affected by the new CPSIA law, and the small business owners are not being included. The small business owners have been at the forefront of the debate against this new law and its ramifications, yet we're being ignored and not given the voice we've fought so hard for you to hear.

This new law threatens to put me and thousands of other small businesses out of work. As if our current economy isn't already suffering enough. It is requiring testing and labeling on items I know to be non-toxic. Forgive me if I'm a little rusty with my science, but last I checked, combining a non-toxic item with a non-toxic item does not a lead product make.

I make some one-of-a-kind items; have you thought about how this new law affects unique creations? It would be impossible to ever buy or sell anything personalized or custom in nature.

While the law affects anyone who manufactures items for the under 12 set, it is hitting the small businesses the hardest while big toy companies hide behind their lawyers and are granted exemptions. By excluding the small businesses, you're essentially reaffirming what we've suspected all along; this is all a ploy for big box to put mom and pop out of business.

In order to ensure a more complete and accurate representation of the law's effects, small businesses need to be heard and included. Please re-evaluate and let the majority, who is affected, not be left by the wayside while decisions are made without their voice being heard. We need to be heard. This affects us too.

Sincerely,  
Holly Medell  
info@winklepots.com  
Winklepots Clothing and Accessories



September 4, 2009

The Honorable Henry Waxman, Chairman  
The Honorable Bobby Rush, Subcommittee Chairman  
House Energy and Commerce Committee  
2125 Rayburn House Office Building Washington, DC 20515

The Honorable Joe Barton, Ranking Member  
The Honorable George Radanovich, Subcommittee Ranking Member  
House Energy and Commerce Committee  
2322A Rayburn House Office Building  
Washington, DC 20515

Dear Chairmen and Ranking Members:

It came to my attention today that the committee has scheduled a hearing on September 10, 2009 regarding implementation of the Consumer Product Safety Improvement Act (CPSIA). Initially, I was elated that the Committee is finally going to hold this much needed hearing.

Since I first became familiar with this law last year, my small company has expended enormous personal efforts and financial resources to comply with the CPSIA. I have written numerous letters to legislators and CPSC personnel, pleading with them that it is not economically feasible for me to fully comply with the retroactive treatment of inventory. I will be happy to expound on that. You would just not believe the position that you have put me in by rushing this law into effect.

I am one of the good guys. I follow not only the law but also the moral code. I have small children. I want products to be safe like most people do. However, the draconian CPSIA placed me in a position to either allow our multi-generational family business die as a company or to compromise my own principles.

My pleas to the CPSC consistently told me effectively "our job is not to interpret or modify the law, just to enforce it – take it up with your representative or congressman." Yet my pleas to individual legislators consistently referred me to the CPSC – a useless cycle. So I have been hoping and praying (and expecting, actually) that the committee would eventually take this issue up – and, once and for all, make things right.

**You can imagine how devastated I am to learn that, during the hearing next week, no voice is being given to the interested parties on either side of the issue(s). It is my understanding that testimony will be given only by the Hon. Inez Tenenbaum, Chairman of the U.S. Consumer Product Safety.**

I urge you to call as a witness Rick Woldenberg, Chairman of Learning Resources, Inc. Vernon Hills, Illinois 847-573-8420 so that he can provide an accurate perspective of the business community to this issue that is important to all of us.

Sincerely,

Jack Summersell  
President  
Educators Resource, Inc.  
(251) 645-7337

The Honorable Henry Waxman  
Chairman

The Honorable Bobby Rush  
Subcommittee Chairman

House Energy and Commerce Committee  
2125 Rayburn House Office Building Washington, DC 20515

The Honorable Joe Barton  
Ranking Member

The Honorable George Radanovich  
Subcommittee Ranking Member

House Energy and Commerce Committee  
2322A Rayburn House Office Building  
Washington, DC 20515

Dear Chairmen and Ranking Members:

I am writing in regard to the Committee hearing set for September 10, 2009 in which the Hon. Inez Tenenbaum, Chairman of the U.S. Consumer Product Safety Commission (CPSC), is scheduled to testify on the implementation of the Consumer Product Safety Improvement Act (CPSIA).

The people who should be testifying at this meeting are the businesses that are being hurt or even closing because of CPSIA – home crafters, resellers, charities, low income families and many, many small and medium businesses, not Hon. Inez Tenenbaum. It would really be different if CPSIA was really helping kids, but it's not.

One of the companies that brought lead laden toys to our American children in 2007 was Mattel, but now Mattel is able to use its own testing lab. If they had been testing their items like they should have been, there would have been no problem with lead in the toys. Mattel just needed to follow the laws in 2007 that were all ready on the books.

This law has many different parts to it, such as the testing and labeling. I am a home crafter of doll clothes, sewn, knitted, and crocheted for dolls for children over the age of three. My doll clothes sell for \$8 - \$10 each on ebay. If I had to have them tested at \$70 each, I certainly could not afford to sell. The small amount of money that I was making was being put away for my grandchildren's college.

During this recession, my grandchildren are shopping at resell shops to be able to have new clothes for the school year. But this law states that coats, jeans, and shirts must be tested if they have buttons, snaps, and zippers. These items would be very hard to find without buttons, snaps and zippers. You are punishing the poor and low income with this law.

I hope that you will consider and listen to the many businesses, crafters, children, charities and grandmas that CPSIA is hurting.

Thank you so much for taking the time to read my letter.

Sincerely,

Barbara Raubuch  
Grandma  
ebraubuch@comcast.net

To Sen. Waxman:

As the founder of Free-Range Kids, I strongly believe in keeping kids safe. I also think there is such a thing as "overkill." Or "oversafe," if you will. I hope you will allow more than one person to present to you at your hearings. My followers (1 million and counting) also wonder why we are keeping kids "safe" from things that help much more than hurt them, such as books, which few children eat.

Thank you.

Yours,

Lenore Skenazy  
Columnist, founder of [www.freerangekids.com](http://www.freerangekids.com)  
212 779 3016  
646 734 8426 (cell)  
Busy twittering at FreeRangeKids

The Kids Closet  
P O Box 404  
130 South John St  
Rochester, IL 62563

September 7, 2009 (Yes, I work on Labor Day)

The Honorable Henry Waxman  
Chairman

The Honorable Bobby Rush  
Subcommittee Chairman

House Energy and Commerce Committee  
2125 Rayburn House Office Building  
Washington, DC 20515

The Honorable Joe Barton  
Ranking Member

The Honorable George Radanovich  
Subcommittee Ranking Member

House Energy and Commerce Committee  
2322A Rayburn House Office Building  
Washington, DC 20515

Dear Chairmen and Ranking Members, I am writing in regard to the Committee hearing set for September 10th, 2009 in which the Hon. Inez Tenenbaum, Chairman of the U S Consumer Product Safety Commission (CPSC), is scheduled to testify about the CPSIA law.

I find it outrageous that you are only listening to one witness. Since thousands of small businesses and families have been and continue to be detrimentally affected by this law, I find it reprehensible that you do not have a representative from either of these groups present to testify. I am the Vice President of the National Association of Resale and Thrift Shops and own The Kids Closet, a store that is now down 25% in sales due to the loss of products covered under this law. Although I'm sure none of you feel the effects of a bad economy personally, believe me, plenty of the rest of the country does. This is very poor timing to try to make things safer. If you really want to improve safety for children, go after the big manufacturers who shipped all the lead-laced stuff in from China in the first place. And why was this law made retroactive? Even car manufacturers get years to improve safety and they kill lots more people.

This law makes it impossible to sell items that are perfectly safe but that we have no documentation to prove such.

I really believe that to get a good perspective of all the effects of any change, you need more than one point of view. You can't read the label from inside the bottle.

If you want, I would be happy to come testify. Just ask me.

Sincerely,

Kitty Boyce

1000, Illinois Street  
San Francisco, Ca 94107  
(415) 252-0372  
(415) 252-0369  
www.blueorangegames.com

**Blue Orange USA**

September 6<sup>th</sup>, 2009

The Honorable Henry Waxman  
Chairman

The Honorable Bobby Rush  
Subcommittee Chairman

House Energy and Commerce Committee  
2125 Rayburn House Office Building Washington, DC 20515

The Honorable Joe Barton  
Ranking Member

The Honorable George Radanovich  
Subcommittee Ranking Member

House Energy and Commerce Committee  
2322A Rayburn House Office Building  
Washington, DC 20515

Dear Chairmen and Ranking Members:

*I am writing in regard to the Committee hearing set for September 10, 2009 in which the Hon. Inez Tenenbaum, Chairman of the U.S. Consumer Product Safety Commission (CPSC), is scheduled to testify on the implementation of the Consumer Product Safety Improvement Act (CPSIA).*

*I am very disappointed that no small businesses impacted by the new law have been invited to share their experiences in testimony before the Committee. The business community has been actively calling for hearings since the passage of the CPSIA because of the draconian effects of the new law.*

*Our small business makes educational products for schools and toy stores and has an exemplary 10-year safety record because of our hard work to assure high quality and compliance with law. Yet the innumerable, onerous provisions of the CPSIA have had a devastating impact on our ability to conduct business. These issues need to be explored by the Committee based on the testimony of real companies suffering real pain.*

*The problems caused by the law are myriad. The overly broad definition of "children's products" swept in many products incapable of harming children from lead or phthalates. The CPSC itself has been hobbled by the CPSIA's strict new rules that prohibit risk assessment. The agency has no flexibility to exercise judgment and as a result, have issued impractical guidance and unworkable regulations. In addition, the exemption process under the law is both very limited and very expensive.*

*The severe penalties under the law are not scaring companies into compliance – they are shooting companies out of the market. Even the CPSC's own guidance to resale shops advises stores to consider the option to stop doing business in children's products.*

September 8, 2009

The deck is stacked against small business under the new law. Ironically, while crafters are left to puzzle over how to "ascertain" co-hort information on their products, the new law awards a freebie to large businesses who seek to test their own products.

I strongly believe that the perspective of businesses like our company is essential to a complete picture of the problems caused by the CPSIA and its implementation. Thank you for your consideration of this important matter.

Sincerely,

Julien MAYOT, CEO

[info@blueorangegames.com](mailto:info@blueorangegames.com)

Cell: (415) 572-3885

# SCHOOL AIDS

EDUCATIONAL MATERIALS FOR TEACHERS AND PARENTS

9335 Interline Avenue – Baton Rouge, Louisiana 70809 – (ph) 225.923.0294

September 7, 2009

The Honorable Henry Waxman  
Chairman

The Honorable Bobby Rush  
Subcommittee Chairman

House Energy and Commerce Committee  
2125 Rayburn House Office Building Washington, DC 20515

The Honorable Joe Barton  
Ranking Member

The Honorable George Radanovich  
Subcommittee Ranking Member

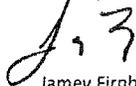
House Energy and Commerce Committee  
2322A Rayburn House Office Building  
Washington, DC 20515

Dear Chairmen and Ranking Members:

I am the president of School Aids, a Baton Rouge based retail and catalog school supply business. We have 76 employees. I was stunned by the Consumer Product Safety Improvement Act (CPSIA). This law has caused massive confusion for thousands of small businesses, causing some to have large inventory write-offs, file for bankruptcy, and go out of business. This is affecting me, and my employees. This law has serious negative impact on small businesses in the United States without having much measurable improvement on safety.

Therefore I was disappointed to learn that no small businesses would be invited to testify at the September 10 Committee hearing regarding the CPSIA. I am writing to ask that you allow for our input.

Thank you for your consideration.



Jamey Firnberg  
President  
jamey@schoolaids.com




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**Vernier Software & Technology**

13979 S.W. Millikan Way • Beaverton, OR 97005-2886  
 toll free 888.837.6437 • 503.277.2299 • fax 503.277.2440  
 info@vernier.com • www.vernier.com

September 4, 2009

The Honorable Henry Waxman  
 Chairman

The Honorable Bobby Rush  
 Subcommittee Chairman

House Energy and Commerce Committee  
 2125 Rayburn House Office Building  
 Washington, DC 20515

The Honorable Joe Barton  
 Ranking Member

The Honorable George Radanovich  
 Subcommittee Ranking Member

House Energy and Commerce Committee  
 2322A Rayburn House Office Building  
 Washington, DC 20515

Dear Chairmen and Ranking Members:

I am writing today in regards to the September 10, 2009 Committee hearing on the CPSIA. It is disappointing that it appears there will be no representation from business owners such as I, whose businesses are suffering from unintended consequences of the law.

Vernier Software & Technology is a small to medium-sized company that makes products for science education. We are confident that our products are safe. We have been manufacturing sensor technology for over 28 years, and safety is a priority to us. We adhere to environmental and material usage directives that are accepted in countries throughout the world. Yet due to the CPSIA, we have discontinued the marketing and sales of our products for use by students under age 13. This is not only a blow to us as a company, but to science education in this country.

Due to broadly-written definitions in the law, we are not even certain whether it applies to us. Should science education probeware that connects to a computer (e.g., a temperature probe or light sensor used in a science experiment), be lumped into the same category as toys and child care products? We need clarification and communication.

I applaud your work to keep our country's children safe. Yet there are consequences of this law that need to be understood and addressed. I appreciate your time and consideration of allowing small business to have a voice at the hearing.

Sincerely,

David Vernier  
 Founder and CEO, Vernier Software & Technology  
 dvernier@vernier.com  
 503-277-2299



September 7, 2009

The Honorable Henry Waxman  
Chairman

The Honorable Bobby Rush  
Subcommittee Chairman

House Energy and Commerce Committee  
2125 Rayburn House Office Building  
Washington, DC 20515

The Honorable Joe Barton  
Ranking Member

The Honorable George Radanovich  
Subcommittee Ranking Member

House Energy and Commerce Committee  
2322A Rayburn House Office Building  
Washington, DC 20515

Dear Chairmen and Ranking Members:

I am writing in regard to the Committee hearing set for September 10, 2009 in which the Hon. Inez Tenenbaum, Chairman of the U.S. Consumer Product Safety Commission (CPSC), is scheduled to testify on the implementation of the Consumer Product Safety Improvement Act (CPSIA).

The last year has been especially difficult on small businesses like those of our members, 50% of who have gross sales of under \$3 million. Since Congress passed the Consumer Product Safety Improvement Act of 2008 – a law which we have supported from the beginning – the juvenile products industry has spent at least \$45 million on increased testing and compliance costs and we've lost more than \$138 million in destroyed or returned inventory. Implementation of this well-intentioned but poorly-conceived law during the current recession has been a nightmare. One estimate shows the combined effects on the juvenile products industry of the CPSIA and the recession to be greater than \$430 million and rising.

Many small businesses in the juvenile products industry came to DC earlier this year to meet with our Senators and Members of Congress about the CPSIA. We were mostly told to wait for the Obama administration's appointees to take charge at CPSC and things would get better. Now, all five Commissioners have been confirmed and the chairman has been on the job since late June. We still need help. Our biggest fear is that the new folks in charge will tell Congress that the worst has passed and everything will be fine. I am writing to tell you that is not the case.

---

Juvenile Products Manufacturers Association, Inc.  
15000 Commerce Parkway, Suite C • Mt. Laurel, NJ 08054 • 856.638.0420 • 856.439.0525  
E-mail: [jpma@abint.com](mailto:jpma@abint.com) • Website: [www.jpma.org](http://www.jpma.org)

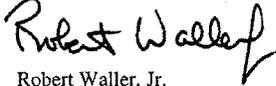
We believe Congress needs to amend the CPSIA this year. Everyone seems to admit there have been unintended consequences – but no one can agree on whether and how to address them. We are not asking to repeal the law in its entirety because we know that is not politically feasible or, frankly, desirable. There are some good things in there already. But I hope you can work towards making a few changes to make things better for small businesses and better for the agency staff who are struggling to implement the CPSIA. Common-sense reforms in areas such as tracking labels, science- and risk-based regulations, certification, retroactivity, and component part testing would help turn a well-intentioned law into a well-made law.

Small businesses impacted by the new law, such as those small businesses represented by JPMA, must be included in Thursday's hearing and must be invited to share their experiences in testimony before the Committee. Many of the small family businesses we represent have built their reputations on the safety and enjoyment of their products, and have spent multiple generations assuring high quality products that comply with all laws and regulations. Yet the innumerable, onerous provisions of the CPSIA have had a devastating impact on the ability of many of our members to conduct business. These issues need to be explored by the Committee based on the testimony of real companies suffering real pain. Small businesses like JPMA members in all 50 states are counting on you.

Thank you for your consideration.

With best wishes,

Sincerely,



Robert Waller, Jr.  
President  
[rwaller@ahint.com](mailto:rwaller@ahint.com)  
Phone: 856-642-4402

2010 NE 123<sup>rd</sup> Avenue  
Vancouver, WA 98684-5500  
September 5, 2009

The Honorable Henry Waxman  
Chairman, House Committee on Energy and Commerce  
2125 Rayburn House Office Building  
Washington, D.C. 20515

Dear Honorable Henry Waxman,

I am extremely upset by the effects of the Consumer Product Safety Improvement Act of 2008 on small business and Native Americans. I'm the owner of a fledgling toy business. It's been my dream of twenty-five years, and just as I am in the process of achieving it, the over-reaching effects of the CPSIA are threatening it. As an American citizen and a dyed-in-the-wool Democrat, I'd like to believe that the negative fallout on such businesses as mine was unintentional, but I wonder when I see how that Mattel gets to test its own toys!

I'm just as concerned for the Native American cultures as for my own welfare. This law has put them at risk, along with every other ethnic culture whose children depend on custom clothing to participate in cultural events.

Traditional powwow, ceremonial and burial clothing for Native Americans is an important part of cultural activities. Every outfit made is intentionally one-of-a-kind, to reflect the family, clan and tribal heritage of the wearer. Clothing is an integral part of most cultural activities, and is a continuation of the ancient tradition of tribal members dressing in an identifiable manner.

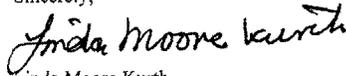
Without community members and commercial regalia makers helping to dress our children, many children of busy working parents will be left sitting on the sidelines at cultural events. Many people who have previously made regalia for children have already stopped making it due to this law. So this legislation is already preventing Native American children from participating in cultural activities, thus hindering families and tribes from passing on their traditions to their children.

The Consumer Product Safety Improvement Act of 2008 requirements of expensive 3rd party testing and tracking of every "SKU" made for children under age 13 is financially infeasible for small businesses and custom clothing makers. The end result will be Native American Cultural Genocide on the level not seen since the days when children were forced to attend Indian Boarding Schools and punished for speaking their native tongues.

Unless this legislation is amended to allow raw material manufacturers to certify their products are safe to use in products for children, those of you who refuse to amend this flawed piece of legislation will be PERSONALLY RESPONSIBLE for destroying the very heart and soul of native cultures, and the very FUTURE OF NATIVE AMERICA.

I implore you to open the upcoming hearing to include testimony by representatives of the small business community. As a member of the Handmade Toy Association, I'm proud that its leaders have diligently studied all of the issues surrounding the CPSIA and have commonsense suggestions for improving this act. I implore you to hear them testify.

Sincerely,



Linda Moore Kurth

2010 NE 123<sup>rd</sup> Avenue  
Vancouver, WA 98684-5500  
September 5, 2009

The Honorable Bobby Rush  
Chairman, Subcommittee on Commerce, Trade and Consumer Protection  
2125 Rayburn House Office Building  
Washington, D.C. 20515

Dear Honorable Bobby Rush,

I am extremely upset by the effects of the Consumer Product Safety Improvement Act of 2008 on small business and Native Americans. I'm the owner of a fledgling toy business. It's been my dream of twenty-five years, and just as I am in the process of achieving it, the over-reaching effects of the CPSIA are threatening it. As an American citizen and a dyed-in-the-wool Democrat, I'd like to believe that the negative fallout on such businesses as mine was unintentional, but I wonder when I see how that Mattel gets to test its own toys!

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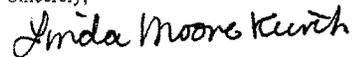
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Sincerely,



Linda Moore Kurth

2010 NE 123<sup>rd</sup> Avenue  
Vancouver, WA 98684-5500  
September 5, 2009

The Honorable Joe Barton  
Ranking Member, House Committee on Energy and Commerce  
2322A Rayburn House Office Building  
Washington, D.C. 20515

Dear Honorable Joe Barton,

I am extremely upset by the effects of the Consumer Product Safety Improvement Act of 2008 on small business and Native Americans. I'm the owner of a fledgling toy business. It's been my dream of twenty-five years, and just as I am in the process of achieving it, the over-reaching effects of the CPSIA are threatening it. As an American citizen and a dyed-in-the-wool Democrat, I'd like to believe that the negative fallout on such businesses as mine was unintentional, but I wonder when I see how that Mattel gets to test its own toys!

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I implore you to open the upcoming hearing to include testimony by representatives of the small business community. As a member of the Handmade Toy Association, I'm proud that its leaders have diligently studied all of the issues surrounding the CPSIA and have commonsense suggestions for improving this act. I implore you to hear them testify.

Sincerely,

  
Linda Moore Kurth

*Littlecrow Trading Post LLC*  
Red Rock, OK  
[www.littlecrowtradingpost.com](http://www.littlecrowtradingpost.com)

Sept. 7, 2009

The Honorable Henry Waxman  
The Honorable Bobby Rush  
The Honorable Joe Barton  
The Honorable George Radanovich

Dear Honorable Congressmen,

The war being waged on small business and Native Americans by the Democratic Party, via the Consumer Product Safety Improvement Act of 2008 is *extremely* distressing. Once again we're victims of a Congress who has legislated Indians into forced assimilation, albeit as collateral damage caused by unintended consequences this time. In any case, the CPSIA is legislative *NATIVE AMERICAN CULTURAL GENOCIDE*.

I'm Janet Littlecrow, partner in Littlecrow Trading Post LLC with my husband James. I'm a lifelong DEMOCRAT who is *furios* that members of my own party are *IGNORING MY CONCERNS*, and I grow more inclined to raise a stink daily. Ask Cindy Sheehan if one tough woman can make a difference.

My husband and I run an internet-based business in rural Oklahoma, producing traditional clothing and powwow dance regalia for Native Americans throughout the U.S. & Canada. Our inventory is handmade and "one of a kind", representing the dancer's family, clan and tribal heritage. Testing each "SKU" is cost-prohibitive. Destructive testing can't be done on a beaded buckskin dress, feather dance bustle or beaded feather fan. Our items don't need cradle-to-grave tracking like a commercial aircraft altimeter, and don't get recalled.

Clothing is an integral part of most cultural activities, and is a continuation of the ancient tradition of tribal members dressing in an identifiable manner. We can adapt some items to use plain fabrics, yarn and ribbon, without snaps, buttons and zippers. However, beaded buckskin dresses, leggings and beaded moccasins are mainstays of Native American attire. Jingle dresses use hundreds of tin cones on a dress. Dyed deer tail lines the outside of a porcupine hair roach headdress. Quillwork was used for decoration before beads; maybe I should start hunting porcupine since beads are glass and are not exempt. Do I need to start cooking up deer brains to brain-tan deerskins like in the old days, since commercially-tanned skins aren't "natural"? Should I start using duck poop for blue dye, buffalo gallstones for yellow dye, bloodroot for red dye again? I can go on...

Many regalia makers have stopped making children's items because of the CPSIA. *This law is already forcing assimilation on Native American children, by restricting their participation in powwows & cultural events.* Cultural diversity is the strength of this country. The children of other ethnic cultures depend on custom clothing to participate in cultural events also. This law has the potential to light a firestorm.

Certification should be done at the raw materials level. There are simple solutions to FIX THE PROBLEMS!

***PARTISAN POLITICS ARE UGLY FROM EITHER SIDE OF THE FENCE!***

Janet Littlecrow  
Owner/Partner, Littlecrow Trading Post LLC  
PO Box 243 Red Rock, OK 74651  
(580) 723-9244  
[www.littlecrowtradingpost.com](http://www.littlecrowtradingpost.com)

*Maiden America*  
HANDMADE JUST FOR YOU

www.maidenus.com

September 7, 2009

The Honorable Henry Waxman -Chairman

The Honorable Bobby Rush - Subcommittee Chairman

House Energy and Commerce Committee  
2125 Rayburn House Office Building  
Washington, DC 20515

The Honorable Joe Barton - Ranking Member

The Honorable George Radanovich - Subcommittee Ranking Member

House Energy and Commerce Committee  
2322A Rayburn House Office Building  
Washington, DC 20515

Dear Chairmen and Ranking Members:

I am deeply chagrined to learn that **not even one** of the thousands of small businesses being discriminated against by CPSIA legislation have been invited to testify at the Committee hearing set for September 10, 2009 in which the Hon. Inez Tenenbaum, Chairman of the U.S. Consumer Product Safety Commission (CPSC), is scheduled to testify on the implementation of the Consumer Product Safety Improvement Act (CPSIA).

Your decision not to include the voice of small business at your hearing supports the idea that CPSIA is a holocaust against small business in that, apparently and as far as I can see, **the small business victim – the most disadvantaged under this new law – is being eliminated from both the dialogue at your hearings and from competing fairly in the marketplace.** I have deep concerns about this practice being permitted by public servants charged with listening to our will and performing their duties to us in a manner that supports our expressed concerns, true will and best interests.

As a small business owner devastated by CPSIA, I have come to the harsh understanding that "intent" of a law does not mean the same as "letter" of the law. After reading a feature about the First Lady's "organic" garden (attached) and another (also attached), more recent feature about Mattel being given a "pass" while the rest of the peons in our industry continue to suffer in playing by the rules set down by the CPSIA (confusing as they are!), I'm officially exhausted by the entire nightmare, for which I now hold you and your Committee 100% responsible.

Mr. Chairman, you and your associates have not only gotten my attention as a business woman, you have also gotten my dander up, as a citizen and parent. This law has officially replaced "Mother Approved" with "Big Brother Approved," effectively undermining parental authority across this great nation. From a small business perspective, your committee has established CPSIA "at our expense," not "on our behalf." The discrimination, hypocrisy, lack of representation and apparent disregard for getting this law "right" on behalf of OUR children and the small, family-owned business victims that serve / support them (one and the same interest) is as obvious as the nose on your face.

What ever happened to **equal representation**? Small business is the backbone of the American economy. Unless the intent is to foster a new kind of backbone that serves another type of economic model, I can see no reason why this committee would, in all good conscience, fail to include our voice at your hearings? I strongly urge you to invite small business to testify at this and every future hearing you may hold regarding a law that so deeply impacts the "little guy."

Sincerely,

Tristan Benz  
Mom, Citizen, Registered Voter, Small Business Owner  
tristanb at maidenUS dot com

### Is The White House's Organic Garden Toxic To Kids?

Jeff Stier , 07.23.09, 01:24 PM EDT

<http://www.forbes.com/2009/07/23/white-house-garden-opinions-contributors-jeff-stier.html>

No, according to toxicologists. It ought to be, according to environmentalists.

Michelle Obama's "organic" White House garden was designed to promote a green agenda. In order to provide safe food to children in the community, the First Lady wouldn't use chemical pesticides or fertilizers. Green groups cheered. In an ironic twist, all of that has now backfired.

The garden was created using a "green" approach, based on the belief that exposure to even minute levels of synthetic chemicals and contaminants such as lead is dangerous. Indeed, when environmental activist groups lobbied for a drastic consumer product safety law known as the Consumer Product Safety Improvement Act (CPSIA), they repeated the frightening but unscientific mantra that "there is no safe level of exposure" to the synthetic chemicals and contaminants they sought to ban.

The law passed, but it won't make anyone safer; the idea that the level of exposure doesn't matter flouts every known precept of toxicology. CPSIA is putting the squeeze on already threatened small businesses, forcing them to discard products with the tiniest trace of forbidden substances--and it turns out the White House is getting a taste of the same medicine.

Earlier this month, The New York Times reported that the National Park Service found lead in the White House garden soil. In fact, tests found somewhere between 450% and 900% of the normal amount of lead in U.S. soil. The White House did not dispute the findings but defended the lead in the garden, calling it "completely safe." They are right. Though lead at higher levels can be dangerous, the garden, like the products banned by CPSIA, is well within safety limits. But the White House's defense rings of self-serving hypocrisy. Where were the White House reassurances when environmentalists were pushing CPSIA restrictions on other fronts?

Greenpeace, the Environmental Working Group, and others who were behind CPSIA--along with their allies in Congress and in the administration--manipulate the fears of concerned parents by contradicting established rules of toxicology, claiming that all lead needs to be eliminated. Aside from causing needless panic, their agenda could end up taking an expensive toll on industry and driving up prices for consumers.

The consequences of environmentalist fear-mongering are already spreading quickly. Bisphenol-A (BPA) and phthalates in plastics have been thoroughly demonized by junk-science reports--so much so that people forget these chemicals have never been shown to be harmful to humans. Likewise, the organic approach endorsed by the White House unjustly contests the proven safety of properly applied chemical pesticides and fertilizers. Now that they've seen the light, will the White House join thousands of small businesses and consumers calling for the repeal of the CPSIA? The Bush Food and Drug

Administration found BPA to be safe, but the Obama FDA called for a do-over. Will their findings be consistent with the White House's newfound appreciation for basic tenets of toxicology? Will the new regime at the EPA halt its trumped-up health claims and halt their unprecedented attack on America's producers?

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If so, something truly beneficial will have grown out of the White House's "organic" garden after all.

Jeff Stier is an associate director of the [American Council on Science and Health](#).

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**Mattel gets a CPSIA waiver**

posted at 9:30 am on August 28, 2009 by Ed Morrissey

<http://hotair.com/archives/2009/08/28/mattel-gets-a-cpsia-waiver/>

After consumers discovered an influx of lead-tainted toys imported by Mattel and other companies, Congress acted to strengthen protections through the Consumer Protection Safety Improvement Act (CPSIA). The legislation created almost impossible hurdles for small manufacturers and resellers for testing products, while earlier this month the CPSC announced it would send inspectors fanning out across the USA to enforce the laws in thrift shops. Now one of the companies that created the problem in the first place has gotten a waiver from the CPSIA's requirements for third-party testing:

Toy-makers, clothing manufacturers and other companies selling products for young children are submitting samples to independent laboratories for safety tests. But the nation's largest toy maker, Mattel, isn't being required to do the same.

The Consumer Product Safety Commission recently, and quietly, granted Mattel's request to use its own labs for testing that is required under a law Congress passed last summer in the wake of a rash of recalls of toys contaminated by lead. Six of those toys were produced by Mattel Inc., and its subsidiary Fisher-Price. ...

Mattel is getting a competitive advantage, Green said, because smaller companies must pay independent labs to do the tests. Testing costs can run from several hundred dollars to many thousands, depending on the test and the toy or product.

Mattel had to recall more than 2 million toys from the market after inspectors discovered lead in the imported products. Now they claim that their "firewalled" labs will protect consumers and block out "corporate influence". Where are the labs that Mattel will use? Mexico, Malaysia, Indonesia, and China — and China is where the dangerous toys originated.

Mattel gets to test its own products. People like Suzi Lang have to pay laboratories to certify their hand-made products contain no lead or phthalates, which she already knows because she handpicks her materials. Thrift stores have to either test products for resale or confirm that they have not been recalled, on an individual basis. But the company that caused the biggest problem that led to the CPSIA gets a waiver. How convenient ... and unjust.

Dr. Stevanne Auerbach, PhD/Dr Toy  
268 Bush Street  
San Francisco CA 94104  
September 3 2009  
[drtoy@drtoy.com](mailto:drtoy@drtoy.com) 510) 540 0111

**The Honorable Henry Waxman, Chairman  
Subcommittee Chairman  
House Energy and Commerce Committee  
2125 Rayburn House Office Building  
Washington, DC 20515**

**The Honorable Bobby Rush  
The Honorable Joe Barton  
Ranking Member  
The Honorable George Radanovich  
Subcommittee Ranking Member  
House Energy and Commerce Committee  
2322A Rayburn House Office Building  
Washington, DC 20515**

Dear Chairmen and Ranking Members:

I am writing in regard to the Committee hearing set for September 10, 2009 in which the Hon. Inez Tenenbaum, Chairman of the U.S. Consumer Product Safety Commission (CPSC), is scheduled to testify on the implementation of the Consumer Product Safety Improvement Act (CPSIA).

I am very disappointed that no small businesses impacted by the new law have been invited to share their experiences in testimony before the Committee. I know that the business community has been actively calling for hearings since the passage of the CPSIA because of the disastrous effects of the new law. The changes are affecting innovative people who are creating the best products possible. They are safe, used throughout the country, and many products are made in the USA. I am aware of many who have created small business that make products for home and school that are seriously affected at the huge costs involved in meeting the new laws. The problems in the first place stemmed from mismanagement of Chinese factories by one of the largest toy companies who should have had quality assurance and on-going staff supervision in China. As a result of their oversights as to safety the repercussions are instead affecting the small mom and pop businesses who can no longer afford to compete. This is unfair and out of proportion to the problem that caused this change in the first place.

Then you are not allowing the small companies who are greatly affected by the new laws to share their real and serious concerns and that is totally unfair and causing further alienation. These issues need to be explored by the full Committee based on the testimony of real companies and the people involved who are suffering real pain. The problems caused by the law are myriad.

The Honorable Henry Waxman, Chairman September 3, 2009  
The Honorable Bobby Rush  
The Honorable Joe Barton  
The Honorable George Radanovich

Page 2

The overly broad definition of “children’s products” swept in many products that are incapable of harming children from lead or phthalates. The CPSC itself has been hobbled by the CPSIA’s strict new rules that prohibit risk assessment. The agency has no flexibility to exercise judgment and as a result, have issued impractical guidance and unworkable regulations.

In addition, the exemption process under the law is both very limited and very expensive. The severe penalties under the law are not scaring companies into compliance – they are forcing companies out of the market. Even the CPSC’s own guidance to resale shops advises stores to consider the option to stop doing business in children’s products. The deck is stacked against small business under the new law. Ironically, while crafters are left to puzzle over how to “ascertain” co-hort information on their products, the new law awards a freebie to large businesses who seek to test their own products.

I strongly believe that the perspective of businesses that are small, innovative and constitute the cross section of America are essential to a complete picture of the problems caused by the CPSIA and its implementation. Thank you for your consideration of this important matter and opening the doors to a full and complete understanding of the current state of the toy and educational product market. It is too important to this country to let it be destroyed by laws that are not flexible in standards or methods. Hope you will hear the full “Toy Story” and not throw out the baby with the bathwater or even listen to its cries. At least listen and act from having a clear understanding of what is being asked of those without deep pockets. This country needs all of the innovation, productivity and production it can muster and it needs it now.

Sincerely,  
*Stevanne Auerbach*  
Dr. Stevanne Auerbach, PhD./Dr Toy™

Sept. 6, 2009

To Chairman Waxman and other members of the Congressional committee reviewing the pending requirements of CPSIA.

My company -Timeless Toys Inc., Hayward, CA is a very small company. We employ three people and our sales volume is less than \$500, 00 per annum. There must be well over 500 similar and smaller sized companies in the Toy Industry today. We are the innovators and creators of new products as well as classic products. We have always complied with all of the voluntary toy safety standards and our own in house quality control systems have always resulted in safe, well designed, quality products. We have never had a recall or any safety issue in all the years I have been in business.

I actually assisted in the creation of the Voluntary Toy Safety Law back in the 1980's when I was CEO of a Toy company with revenues of \$250 Million. As Dr. Stevanne Auerbach pointed out in her comprehensive letter on the subject; we do not have the resources of the dominant large companies in the industry and it is the largest one who actually caused the major problem.

The new requirements are especially onerous and costly to the smaller companies. Most of us are struggling to keep our doors open in the present economic climate and the new requirements make our situation even more tenuous. The CPSIA law of 2008 was made in an atmosphere of hysteria caused by the larger companies and a few others who were not in compliance. No analysis was made as to the impact the requirements would have on small companies. Please extend the compliance date to allow more input and arguments from smaller companies before a final compliance date is set. We are still not certain as of this writing of exactly what the acceptable labeling requirements are! These new requirements are causing our suppliers problems as well and they are also confused as to what is required. The law as it is now written should be rescinded and other alternatives should be reviewed.

I will be glad to provide more information if needed or requested.  
Sincerely yours,

Harold A. Nizamian  
Chairman, Timeless Toys Inc  
2534 Barrington Ct.  
Hayward, CA 94545  
Tel 510 -732 1960 Fax 510 732 6190, [harry@timeless-toys.com](mailto:harry@timeless-toys.com)



September 8, 2009

**ATTN: House Subcommittee on Commerce, Trade, and Consumer Protection**

To Whom It May Concern:

My name is DeAnn Nightingale and I organize and operate a small children's consignment sale within Central Ohio every spring and fall.

This small business, Three Bags Full Children's Consignment Sale, represents thousands of families from throughout the Central Ohio community. The recent CPSIA law has been confusing and unclear to the community of consumers, and the retail small business community.

It is unsatisfactory that such a poorly written law was put into effect without proper foresight and without proper collaborating with the community of consumers and small business owners. The media attention to the CPSIA, the greatly inappropriate number of individuals handling the CPSIA and the poorly thought out execution of this law should be indicators to you that this is of the utmost important to small businesses and the general consumer.

Your scheduled hearing on September 10 is overdue. You have scheduled to call one witness, someone representing the CPSC, and no one from the small business community or the crafters community or the general consumer that is affected by this law. That is unacceptable.

May I remind you that you are elected officials and work for the general public. It is your duty to effectively and adequately explore all ramifications of the CPSIA and make due changes as necessary. Do not punish the community of consumers, small businesses and the crafting industry because of excessive lead paint found in toys from China. Thoroughly research what is due diligence, responsibility and appropriateness in legislation to keep excessive lead paint toys and other products from entering the market. To do so, calling more than one witness is absolutely necessary. All sides should be able to discuss and explore their situation so that responsible and insightful change can take place.

Sincerely,

DeAnn Nightingale, sale organizers  
Three Bags Full, Children's Consignment Sale  
740-587-2923

[www.threebagsfull.info](http://www.threebagsfull.info)  
7619 North Street Newark, OH 43055



Promoting an Open Market for Quality Educational Products and Services

An Education Trade Association Founded in 1916

September 8, 2009

The Honorable Henry Waxman, Chairman  
 The Honorable Bobby Rush, Subcommittee Chairman  
 House Energy and Commerce Committee  
 2125 Rayburn House Office Building,, Washington, DC 20515

The Honorable Joe Barton, Ranking Member  
 The Honorable George Radanovich, Subcommittee Ranking Member  
 House Energy and Commerce Committee  
 2322A Rayburn House Office Building, Washington, DC 20515

Dear Chairmen and Ranking Members:

We have just learned that only one speaker — the Hon. Inez Tenenbaum, Chairman of the U.S. Consumer Product Safety Commission (CPSC), is scheduled to testify at the Committee hearing being held on September 10, 2009 on the implementation of the Consumer Product Safety Improvement Act (CPSIA). We are very disappointed that no small businesses impacted by the new law have been invited to share their experiences in testimony before the Committee. The business community has been actively calling for hearings since the passage of the CPSIA because of the harsh effects of the new law.

NSSEA represents 1,500 companies in the children's product marketplace. These educational product manufacturers and retailers care deeply about the safety of children; however, we have grave concerns about the insurmountable burden the CPSIA places on small businesses in the educational products marketplace. It is our hope that your Committee hearing will lead to prompt action to correct the excessive reach of this law and its devastating consequences on the small businesses within the educational products industry.

Here are some specific areas of concern:

**1) The definition of children's product is too broad.**

The CPSIA imposes a regulatory burden on the children's product industry unrelated to risk. Many of these items, have never presented any risk of injury and therefore will have no effect on improving safety. Both the lead and phthalates bans need to be carefully constrained to avoid unnecessary harm to commerce. The safety concerns covered by the CPSIA mainly pertain to products aimed at young children. We recommend the age limit for the definition of "children's products" be reduced to eight years and that the CPSC have the discretion to lower the age limit for certain groups of products for which the risk of harm from lead or phthalate exposure is remote to non-existent (for example, children's books, even those published prior to 1985, ATVs and bicycles).

**2) The deadlines are not practicable and the economic impact is severe.**

The children's product industry is not prepared for the sudden imposition of heavy regulatory burdens. Children's products are typically priced low in a very competitive marketplace. The overhead and infrastructure needed to comply with the CPSIA are unreasonable for small manufacturers, single location stores or even small retail chains and will accelerate mass consolidation in the channel. These changes will lead to businesses closing and continued job elimination.

National School Supply and Equipment Association

8380 Colesville Road • Suite 250 • Silver Spring, Maryland 20910 USA • 301-495-0240 • www.nssen.org

**3) The penalties are excessive.**

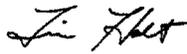
The economic impact is overwhelming. In an effort to address every possible danger, the new law exposes businesses to excessive testing costs and record-keeping expenses and enforces its new rules with penalties of up to \$100,000 per violation. We urge you to sharply restrict the use of heavy penalties in the CPSIA particularly for inadvertent violations and for small businesses. The current law provides broad discretion to the CPSC to impose excessive fines, criminal charges and even asset forfeiture. Our members care deeply about safety and have a proven record of providing safe products.

**4) Commission needs more leeway to make risk-based decisions for banned products containing lead.**

The mere presence of lead in many materials does not mean there is a risk of injury. For example, older children are far less susceptible to lead poisoning and engage in less of the mouthing behavior that can cause lead ingestion. Further, small amounts of lead bound in plastic or other materials may never be biologically available to a child, and lead transfer from certain types of products is highly unlikely given the nature of certain products (examples classroom items, bicycle valves, ATVs, motorbikes). The Commission should have the discretion to set limits on the lead ban that take these factors into account, including excluding certain age groups, products, and materials based on a risk based analysis. This would result in the high level of consumer protection anticipated by the Congress without imposing the kinds of costs for testing and compliance that are putting our members and many other consumer product firms in jeopardy.

On behalf of the members of the National School Supply and Equipment Association, we urge Congress to give business a seat at the table in its efforts to implement reasonable and common sense amendments to the CPSIA to fix its many serious flaws. As the impact of the CPSIA has already caused damage to many companies, there is a great deal of urgency to listen to the businesses in this marketplace in order to act both sensibly and quickly.

Cordially,



Tim Holt  
President/CEO  
National School Supply and Equipment Association

Cc: The Honorable Inez Tenenbaum, Chairman

NSSEA Board of Directors

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Debbie Moore, Peter Li Education Group  
Greg Moore, MooreCo., Balt/Best-Rite  
Janet Nelson, DEMCO  
Molly Risdall Parnell, Smith System



Suzi Lang  
Owner and Designer  
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Boalsburg, PA 16827

[www.starbrightbabyonline.com](http://www.starbrightbabyonline.com)  
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9/8/2009

The Honorable Henry Waxman  
Chairman

The Honorable Bobby Rush  
Subcommittee Chairman

House Energy and Commerce Committee  
2125 Rayburn House Office Building Washington, DC 20515

The Honorable Joe Barton  
Ranking Member

The Honorable George Radanovich  
Subcommittee Ranking Member

House Energy and Commerce Committee  
2322A Rayburn House Office Building  
Washington, DC 20515

Dear Chairmen and Ranking Members:

I am writing in regard to the Committee hearing set for September 10, 2009 in which the Hon. Inez Tenenbaum, Chairman of the U.S. Consumer Product Safety Commission (CPSC), is scheduled to testify on the implementation of the Consumer Product Safety Improvement Act (CPSIA).

I am very disappointed that there will be only one person testifying at this hearing, when this law negatively affects thousands and thousands of small businesses. This law not only makes it difficult to do business, it makes it almost impossible for a small business like mine. I make and sell Teething Giraffes. My Giraffes are made from 100% cotton, natural fiber stuffing and thread. However, according to the CPSIA I have to have my item tested for lead and phthalates, where no lead or phthalate ever existed.

This law unfairly targets small businesses like mine who make safe, but small batches of children's items. I think it only fitting that we have a seat at the table.

In this rough economic time, putting thousands and thousands of small businesses out of business isn't the prudent course to take. Please listen to our concerns.

Suzi Lang  
Owner and Designer, Starbright Baby  
[suzilang@gmail.com](mailto:suzilang@gmail.com)



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September 8, 2009

House Committee on Commerce, Trade and Consumer Protection

RE: HEARING titled "Consumer Product Safety Commission Oversight: Current Issues and a Vision for the Future."

My name is Kate Maxin, and I am the manager of TFH USA located near Pittsburgh, PA. TFH USA is part of an international company founded in England in the early 1980's by a British Schoolmaster, who felt that there were insufficient quality products for children with Special Needs. The company has grown over the years, and TFH USA has been established since July 1991. We began with two employees and sales of \$300,000 per year. Eighteen years later we have 8 employees and sales just slightly over two million dollars.

Due to our understanding of the disabilities of our end-user, our products have ALWAYS been designed and manufactured with quality foremost. We have always used paint without lead and without small parts. Many of our toys are manufactured by our sister company in England, and they conform to the European Safety Standard -CE. The items manufactured in the U.S. are done by small local companies, manufacturing to our high standards. Our line has been rounded out by offering a few general, developmental-type toys from well-known toy distributors in the U.S. and in England. Our toy line has been awarded the "Symbol of Excellence" by Exceptional Parent Magazine in 2005, 2006 and 2007.

Because of the size of this segment of the toy industry, many of our products have annual sales of less than 100 units, some as few as 10. But we continue to manufacture even low volume products because of our desire to serve the growing community of children and adults with various forms of disabilities.

To test every product to the CPSIA standards would devastate our company and we would not survive. To follow your guidelines for the February 10<sup>th</sup> deadline for existing inventory would not be physically or financially possible. Small companies, like ourselves, that have always strived to offer quality, safe products are being unfairly penalized along with the very large toy manufacturers, who have gone offshore to produce their products in order to enhance their profitability.

It has come to my attention that a meeting is to be held with ONE WITNESS ONLY. I disagree with the Subcommittee on this decision. The business community (particularly Small Business) raised many legitimate and serious objections to this law and its implementation. To exclude the business community from this hearing is to distort the truth and to keep inconvenient views off the record. I have written to my congressmen numerous times and am angry at their responses.

I am pleading with you for your assistance to help us to survive this regulation. Our company's passion for providing products for children and adults with special needs would not be able to overcome this onerous legislation. For reference, our websites are [www.tfhusa.com](http://www.tfhusa.com) and [www.adultsensoryactivities.com](http://www.adultsensoryactivities.com)

Yours most sincerely  
For TFH USA LTD

Kate Maxin  
General Manager

CC: Arlen Specter, Robert Casey, and Jason Altmire

*Have a sensory experience!*

To whom it may concern:

The new consumer product safety law is a senseless one. We do not need to protect our children from books and socks! Please hold a hearing on this law in which all sides are heard from.

Sincerely,

Marion Sibley



**interscan corporation**

PO Box 2496  
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1 800 458-6153  
Fax (818) 341-0642  
[www.gasdetection.com](http://www.gasdetection.com)

8 September 2009

(via e-mail)

The Honorable Henry Waxman  
Chairman

The Honorable Bobby Rush  
Subcommittee Chairman

House Energy and Commerce Committee  
2125 Rayburn House Office Building Washington, DC 20515

The Honorable Joe Barton  
Ranking Member

The Honorable George Radanovich  
Subcommittee Ranking Member

House Energy and Commerce Committee  
2322A Rayburn House Office Building  
Washington, DC 20515

Dear Chairmen and Ranking Members:

As a small business owner, I am writing in regard to the Committee hearing set for September 10, 2009 in which the Hon. Inez Tenenbaum, Chairman of the U.S. Consumer Product Safety Commission (CPSC), is scheduled to testify on the implementation of the Consumer Product Safety Improvement Act (CPSIA).

It is quite difficult to understand why no one from any of the hundreds of businesses affected by this law will be allowed to testify. As it is, there is little problem in implementation of the law *per se*, as long as the members are not concerned with the devastating consequences.

My friends in the toy industry, along with contacts we have in other aspects of children's products tell me of their concerns:

The overly broad definition of "children's products" swept in many products incapable of harming children from lead or phthalates. Frankly, this was an incredibly foolish aspect of the law. How this could have been vetted is truly a mystery, and would not serve as a confidence builder to a public noticeably wary about pending health care legislation.

The CPSC itself has been hobbled by the CPSIA's strict new rules that prohibit risk assessment. The agency has no flexibility to exercise judgment and as a result, have issued impractical guidance and unworkable regulations. If "no level of lead is safe," then how can safe levels be specified in the law? Ms. Tenebaum may be able to elaborate on this and other difficulties, but what about those directly affected?

Regrettably, especially in light of the Mattel decision, whereby this company can now test its own products in its own labs, cynics who note that regulation always favors big companies have been proven right. This is made more irksome inasmuch as Mattel was the poster child for bad toys, which caused this law to be passed in the first place!

Egos notwithstanding, this law has to be modified, and there is no better way to determine how, than by hearing from those affected. I would submit that although the CPSC is "affected," their problems pale in comparison to those of business owners.

Very truly yours,  
INTERSCAN CORPORATION



Michael D. Shaw  
Executive Vice President  
[mds1@gasdetection.com](mailto:mds1@gasdetection.com)

Why is there only going to be one witness on this important matter? Our livelihoods are at stake!

We have been in business since 1972 and have always been concerned with safety. We have been providing products from many of the same suppliers going back as far as 1972. They have stood the test of time and meet the intent of the CPSIA but not the record keeping requirements. We don't understand the results being caused. Companies that meet European standards have decided to stop providing to this country. American companies are going out of business. Companies like us are looking to outsourcing causing people to lose their jobs and so forth.

PLEASE HELP!

~~

Beecher Hoogenboom  
CEO  
Environments, Inc.  
[bhoogenboom@eichild.com](mailto:bhoogenboom@eichild.com)  
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[www.Roylco.us](http://www.Roylco.us)

Tuesday, September 08, 2009

The Honorable Henry Waxman  
Chairman

The Honorable Bobby Rush  
Subcommittee Chairman

House Energy and Commerce Committee  
2125 Rayburn House Office Building Washington, DC 20515

The Honorable Joe Barton  
Ranking Member

The Honorable George Radanovich  
Subcommittee Ranking Member

House Energy and Commerce Committee  
2322A Rayburn House Office Building  
Washington, DC 20515

"Dear Chairmen and Ranking Members:

I am writing to express our views regarding the Committee hearing set for September 10, 2009 in which the Hon. Inez Tenenbaum, Chairman of the U.S. Consumer Product Safety Commission (CPSC), is scheduled to testify on the implementation of the Consumer Product Safety Improvement Act (CPSIA).

My family- owned business develops and manufactures educational and arts and crafts products in the United States and Canada. We have been doing this for over forty years. Our record and reputation for quality and safety are extremely high. Because of this, I am disappointed that no small businesses impacted by the new law have been called on to share their experiences in testimony before the Committee. The business community has been actively calling for hearings since the passage of the CPSIA. The over- reaching provisions of the CPSIA have had a devastating impact on our ability to run our business, let alone develop and market new products. Let us, the companies who this hurts so badly, have equal time to testify and tell you what is really happening here.

The vast majority of products made for children are not harmful. Taking them off the market or never being able to introduce them to the educational systems because of the high costs of testing and all that goes along with the new laws is more harmful.

American companies are choosing to shut down rather than have to deal with these new laws. Some European exporters to America are choosing not to sell their products to us; not because their products are unsafe, but rather because these laws make it impossible to work here and far too expensive to be even remotely profitable. What a shame! Our children suffer in the end. Even second hand stores are shying away from selling children's products. Crafters who make one of kind products are rethinking their artwork and as a result, we will see less made for children under 12.

By giving small and mid size companies equal time will help to clarify all of the problems caused by the CPSIA and its implementation. Thank you for your consideration of this important matter.

Sincerely,

A handwritten signature in black ink that reads "Carolyn". The signature is stylized with a long horizontal line extending from the end of the name.

Carolyn Voisin

To Whom It May Concern,

This email is in regard to the Committee hearing on 9/10/09. As an employee of Learning Resources, I am greatly disappointed that small businesses (who will be impacted by this law) have not been invited to give testimony to the committee. I take great pride in our company's product not only in its service to children but its safety. I feel that without letting the small businesses present their history and examples it will deprive our children of these wonderful products. I would kindly ask that you reconsider this position. Thank you very much for your time and consideration.

Thank You,  
Jeff Kaiser

**Jeff Kaiser**  
**Director of Global Distribution**  
**Learning Resources Inc.**  
**Educational Insights Inc.**  
**380 N. Fairway Drive**  
**Vernon Hills, Illinois 60061**  
**1-847-990-3360 (Office)**  
**1-847-873-6857 (Mobile)**

September 7, 2009

The Honorable Henry Waxman  
Chairman

The Honorable Bobby Rush  
Subcommittee Chairman

House Energy and Commerce Committee  
2125 Rayburn House Office Building  
Washington, DC 20515

The Honorable Joe Barton  
Ranking Member

The Honorable George Radanovich  
Subcommittee Ranking Member

House Energy and Commerce Committee  
2322A Rayburn House Office Building  
Washington, DC 20515

Dear Chairmen and Ranking Members:

I am writing in regard to the Committee hearing set for September 10, 2009 in which the Hon. Inez Tenenbaum, Chairman of the U.S. Consumer Product Safety Commission (CPSC), is scheduled to testify on the implementation of the Consumer Product Safety Improvement Act (CPSIA).

The last year has been especially difficult on small businesses like those of our members, 50% of who have gross sales of under \$3 million. Since Congress passed the Consumer Product Safety Improvement Act of 2008 – a law which we have supported from the beginning – the juvenile products industry has spent at least \$45 million on increased testing and compliance costs and we've lost more than \$138 million in destroyed or returned inventory. Implementation of this well-intentioned but poorly-conceived law during the current recession has been a nightmare. One estimate shows the combined effects on the juvenile products industry of the CPSIA and the recession to be greater than \$430 million and rising.

Many small businesses in the juvenile products industry came to DC earlier this year to meet with our Senators and Members of Congress about the CPSIA. We were mostly told to wait for the Obama administration's appointees to take charge at CPSC and things would get better. Now, all five Commissioners have been confirmed and the chairman has been on the job since late June. We still need help. Our biggest fear is that the new folks in charge will tell Congress that the worst has passed and everything will be fine. I am writing to tell you that is not the case.



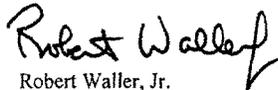
We believe Congress needs to amend the CPSIA this year. Everyone seems to admit there have been unintended consequences – but no one can agree on whether and how to address them. We are not asking to repeal the law in its entirety because we know that is not politically feasible or, frankly, desirable. There are some good things in there already. But I hope you can work towards making a few changes to make things better for small businesses and better for the agency staff who are struggling to implement the CPSIA. Common-sense reforms in areas such as tracking labels, science- and risk-based regulations, certification, retroactivity, and component part testing would help turn a well-intentioned law into a well-made law.

To outline some of our organization's most pressing concerns, the Commission seems unable to define child care articles under section 108 as only those products that are likely to result in ingestion of hazardous amounts of phthalates or define such products that facilitate sleep, feeding, sucking or teething as products reasonably intended to be mouthed. This lack of clarity in policy continues, despite Congressional admonition that restrictions on interim banned phthalates only apply to product that can be mouthed, sucked and chewed. This has resulted in needless testing and restriction of perfectly safe products. Similarly, the Commission has indicated that Congress did not provide it with authority to exclude products that may functionally or inherently contain lead but that do not expose children to it and present no health risk. Corrosion resistant brass and structurally tough metals used in frames of protective products for children, in nuts, bolts and other fasteners (that secure products and keep dangerous small parts inaccessible to children) need to be strong to keep children safe. As a practical matter this needs to be done to assure that structurally sound safety related infant products (strollers, highchairs, carriers, etc) remain affordable and accessible to the public.

Small businesses impacted by the new law, such as those small businesses represented by JPMA, must be included in Thursday's hearing and must be invited to share their experiences in testimony before the Committee. Many of the small family businesses we represent have built their reputations on the safety and enjoyment of their products, and have spent multiple generations assuring high quality products that comply with all laws and regulations. Yet the innumerable, onerous provisions of the CPSIA have had a devastating impact on the ability of many of our members to conduct business. These issues need to be explored by the Committee based on the testimony of real companies suffering real pain. Small businesses like JPMA members in all 50 states are counting on you.

Thank you for your consideration.

Sincerely,



Robert Waller, Jr.  
President

E-mail: [rwaller@ahint.com](mailto:rwaller@ahint.com)

Phone: 856-642-4402

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September 8, 2009

The Honorable Henry Waxman  
Chairman

The Honorable Bobby Rush  
Subcommittee Chairman

House Energy and Commerce Committee  
2125 Rayburn House Office Building Washington, DC 20515

The Honorable Joe Barton  
Ranking Member

The Honorable George Radanovich  
Subcommittee Ranking Member

House Energy and Commerce Committee  
2322A Rayburn House Office Building  
Washington, DC 20515

"Dear Chairmen and Ranking Members:

I am writing in regard to the Committee hearing set for September 10, 2009 in which the Hon. Inez Tenenbaum, Chairman of the U.S. Consumer Product Safety Commission (CPSC), is scheduled to testify on the implementation of the Consumer Product Safety Improvement Act (CPSIA).

I am very disappointed that no small businesses impacted by the new law have been invited to share their experiences in testimony before the Committee. The business community has been actively calling for hearings since the passage of the CPSIA because of the draconian effects of the new law. Our business makes toys products have an exemplary 57-year safety record because of our hard work to assure high quality and compliance with law. Yet the innumerable, onerous provisions of the CPSIA have had a devastating impact on our ability to conduct business. These issues need to be explored by the Committee based on the testimony of real companies suffering real pain.

The problems caused by the law are countless. The overly broad definition of "children's products" swept in many products incapable of harming children from lead or phthalates. The CPSC itself has been hobbled by the CPSIA's strict new rules that prohibit risk assessment. The agency has no flexibility to exercise judgment and as a result, have issued impractical guidance and unworkable regulations. In addition, the exemption process under the law is both very limited and very expensive.

The severe penalties under the law are not scaring companies into compliance – they are shooing companies out of the market. Even the CPSC's own guidance to resale shops advises stores to consider the option to stop doing business in children's products.

I strongly believe that the perspective of businesses like our company is essential to a complete picture of the problems caused by the CPSIA and its implementation.

Thank you for your consideration of this important matter.

Sincerely,

Mona Seto  
Director of Operations  
[mona.chan@blueboxtoys.com](mailto:mona.chan@blueboxtoys.com)



9/8/2009

The Honorable Henry Waxman  
Chairman

The Honorable Bobby Rush  
Subcommittee Chairman

House Energy and Commerce Committee  
2126 Rayburn House Office Building Washington, DC 20515

The Honorable Joe Barton  
Ranking Member

The Honorable George Radanovich  
Subcommittee Ranking Member

House Energy and Commerce Committee  
2322A Rayburn House Office Building  
Washington, DC 20515

Dear Chairmen and Ranking Members:

I am writing regarding the Committee hearing set for September 10, 2009 in which the Hon. Inez Tenenbaum, Chairman of the U.S. Consumer Product Safety Commission (CPSC), is scheduled to testify on the implementation of the Consumer Product Safety Improvement Act (CPSIA).

I would like to express my concern that no small business representatives are scheduled to testify about the impact the new law will have on their businesses. It is incredulous to me, in fact, that only one person is being allowed to testify. Is this hearing simply an attempt to say that a meeting has been held or is it an honest attempt to hear how companies are being affected? If the latter is the goal, then certainly more voices need to be heard. It seems only logical to me that that would be the case.

My company's president has been most involved in expressing the challenges this new law will have our small business. Obviously, as an employee, I am concerned as well for my job security. As our company manufactures educational materials, this law impacts us greatly. We have always had the end user's safety in mind as we have developed our product lines. Without these materials, how are children to receive the education that you and I had growing up? Certainly as danger to our children has been identified by products on the market, they have been evaluated and made safe or been discontinued. The restrictions being applied by this law are extraordinary and in many cases, ridiculous. We need to make our children safe while maintaining a sense of reality and sensibility.

To the point, no one wants children harmed by lead or phthalates. The CPSIA has yet to accurately define many of the products caught up in the generalities defining the amounts of lead and phthalates allowed in products. Furthermore, who can identify the true definition of "child's products"? The generality of both is beyond definition, but has brought much of the industry to a virtual standstill. The penalties are impractical and, frankly, silly. How can these be fairly enforced? Who will be able to make judgments? The expense to companies for testing is beyond comprehension. Products will be forced off the market that are important to our children's education due to the lack of clarity in the law. Do we really want that? Again, how will this impact our country's consumerism, which is the basis of our market place? How many companies will be forced to close? How many of those will just throw up their hands and quit? How many people will be out of work as a result?

May I again express how important it is to hear from actual members of this huge industry, which is being so adversely affected by this new law? Please allow that to happen. As I am sure you are aware, there are many business owners or leaders who would jump at the opportunity to express their concerns to the Committee.

Thank you for your time and attention to this most critical issue.

Sincerely,

Lane Oesterle Miller  
Sales and Marketing representative  
American Educational Products, LLC  
800-446-8767  
loesterl@amep.com

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9/07/09

The Honorable Henry Waxman  
Chairman  
The Honorable Bobby Rush  
Sub-Committee Chairman  
House Energy and Commerce Committee  
2125 Rayburn House Office BLDG Washington DC 20515

Dear Chairmen and Ranking Members,

With your permission,

I would respectfully like to recount for you a brief and recent history of mine and, further, to state for the record how I, James Mentzer ( NYS small business owner ), am directly and negatively impacted by the fast, and largely unchallenged, implementation of the CPSIA as it stands today. The intent of my letter is to lend a voice to the growing chorus of similarly affected businessmen and businesswomen who, as a direct result of this legislation are staring, as I am, at a forced withdrawal from the "toy and game" industry that we so love.

I would also like this letter to reflect my private concerns, as both a parent and as a citizen of this great country, about the unintentional consequences that will inevitably follow this legislation. I strongly believe that these have the potential to be so far reaching, within not only our industry but also every one of our communities at large, that I feel it only prudent that all sides of the CPSIA discussion be given a chance to be heard.

It seems to me that the potential loss of so many businesses' involved entirely in the pursuit of happier and healthier children, families, educators, etc. and coming as it does, at a time when our country so desperately needs a strong and vibrant business community, seems to me a tragedy in the making and one that dictates a closer examination before full implementation.

For my own story let me take you, respectfully, to the year 2005 and have you know this was the year that my wife and I began a 2 ½ year journey that saw us leave the comforts of our country ( USA ) for the challenges of Guyana SA. The purpose of our 'move' was to effectuate the adoption of our son, Christopher, from that country and to maintain his safety, during this period. I would just tell you that, while there, my wife and I were forced to sell our 2 homes in America and give up our successful construction business as well, in order to complete this 'journey' of ours but were, in return, rewarded with a son for whom no sacrifice would be unworthy.

As it came to pass, we eventually returned to our lives here in the 'states, richer for our experience but unfortunately right 'smack dab' in the middle of our country's current financial crisis. Thus, the construction industry was closed to us as a means to make a living and we were forced to do like so many Americans had before us and, hopefully, will be able to do again. That is to say, we went into a new line of business and let our passion become our guide. The trip to Guyana, aside from rewarding my wife and I with the light of our lives, was one that saw us frequenting the orphanages of that country in order to fill our time as productively as we thought able. While so doing, we were able to discover a whole lot about the needs of children and more importantly, for us, the universality of these needs. As a result of this new

understanding I was able to innovate a system for empowering these children and that system, "Goal Bands", became the basis of our new business venture and the circumstance that compels me to write this letter.

The long and short of my story, and the reason for this petition, is that I am now a "toy and game" small business owner and have on my hands a wonderfully successful little educational game product that can quite literally change the world, or so I am told by an increasing number of parents, educators, healthcare professionals, and the like.

This was how my version of the American dream was playing itself out until the specter of the current CPSIA legislation made itself felt to my own small business undertaking.

Esteemed members, it is not my intent in writing this letter to you to overwhelm you with my personal 'take' on this particular legislation. Nor will I cite what I feel to be the specific negative effects it holds for my company or, for that matter our whole country. I would only ask, respectfully, that the "toy and game" businesses' of America be given an opportunity to address your committee in order to provide you with the proper balance necessary to make this legislation the success that we all want it to be.

Sincerely,

James Mentzer, President  
Black Belt Goals Inc.  
[Blackbeltgoals@gmail.com](mailto:Blackbeltgoals@gmail.com)  
845-729-7335 cell



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September 7<sup>th</sup>, 2009

The Honorable Henry Waxman  
Chairman

The Honorable Bobby Rush  
Subcommittee Chairman

House Energy and Commerce Committee  
2125 Rayburn House Office Building Washington, DC 20515

The Honorable Joe Barton  
Ranking Member

The Honorable George Radanovich  
Subcommittee Ranking Member

House Energy and Commerce Committee  
2322A Rayburn House Office Building  
Washington, DC 20515

Dear Chairmen and Ranking Members:

I am writing on behalf of my customers, my company, and my employees in regard to the Committee hearing set for September 10, 2009 in which the Hon. Inez Tenenbaum, Chairman of the U.S. Consumer Product Safety Commission (CPSC), is scheduled to testify on the implementation of the Consumer Product Safety Improvement Act (CPSIA).

I am a small business owner, a catalog retailer in business for 27 years, employing 50-100 people seasonally, and am very disappointed that no small businesses, countless of which are impacted by this law, have been invited to tell of their experiences in testimony before the Committee. As I am sure you know, the business community has been vocal in its efforts to call for hearings since the passage of the CPSIA due to this law's unimaginable effects on its members.

My company has always gone the extra mile to ensure that the products we sell are safe, of high-quality, and of course, compliant with law. We are known in the children's product industry as having integrity and commitment to the safety of our customers. However, the countless burdensome provisions of the CPSIA have had such an impact on us that business has become difficult to conduct. There is no chance we will have a profitable 2009, and this is largely due to the myriad problems caused by this law. As you know, many small businesses have shut down because of these problems, and many more will do so unless our concerns are addressed. Just as tragically and ironically, with all of the expense and hoop-jumping that the law has forced businesses to undergo, the result is that there is little more assurance of safety for our children than the laws that were previously in effect. Simply, compliance with existing laws is what was needed, but inspection was lacking. Instead of tackling that issue, CPSIA was legislated in knee-jerk fashion, creating problems that are so far-reaching that it is mind-boggling. To start with, the law's interpretations are all over the map, and there is little consensus even at the CPSC! How are we to conduct business in this environment?!

To put it mildly, this is insanity, and a sad day in our country's history for businesses who strive to offer safe and high-quality items for children. Families will find themselves with far fewer choices of items to buy for their family, children will be arguably no safer than they were 2 years ago with then-existing laws, businesses will continue to collapse, and good and committed employees will be jobless. In a country that has grown strong on the backs of small business, you need to know that the deck is stacked against them under the new law. Ironically, while crafters are left to puzzle over how to "ascertain" co-hort information on their products, the new law awards a freebie to large businesses who seek to test their own products. This is a truly remarkable time for America, not only because such a near-worthless law has been put into effect, but also because it is so destructive. You owe it to all Americans to have a complete picture of problems caused by the CPSIA and its implementation. I am extremely disappointed that small businesses have not been invited to share their experiences with the committee. Thank you for your consideration of this important matter.

Sincerely,

Ann Ruethling

Founder

[annr@chinaberry.net](mailto:annr@chinaberry.net)



August 26, 2009

The Honorable Henry Waxman  
Chairman

The Honorable Bobby Rush  
Subcommittee Chairman

The Honorable Joe Barton  
Ranking Member

The Honorable George Radanovich  
Subcommittee Ranking Member

House Energy and Commerce Committee  
2322A Rayburn House Office Building  
Washington, DC 20515

Dear Chairmen and Ranking Members:

With regards to the CPSIA legislation, I would like to write to let you know my disappointment in the law as it currently stands. The law is intended for the safety of our children. However, why must we give big business a blank check to bend and break the law, still producing products that contain levels of contamination unsafe for our children, just because they have the funds to write off the "error." Quite frankly, while The CPSIA is intended for good, it is serving to cripple small businesses, "stay-at-home mom" crafters, artisans, and those looking to save by shopping second-hand. And yet companies like Mattel, one of the worst offenders, are allowed to police themselves by using testing methods of their choice. Meanwhile the lady who makes hair bows for toddlers has to retest any time she changes a spool of ribbon.

When the only recourse for airing concerns is to address the one person in charge of the legislation and regulation of the CPSIA, who is in turn the ONLY person asked to give her concerns on the subject in a legislative arena, I shudder with dismay. To this I say, "Hello, Big Brother. Thank you for taking our voices away." We as American people *should* question the decision-making of our legislators. I sincerely urge you to please take *immediate and direct* action to revise the legislation. Temporarily remove the thought of "free trade or die" and "he with the most money wins," and make some adjustments to the law that actually *support America*. Modify the law so that it is written to support *American* small business with *American-made*, safe (and ideally American-made) components resulting in quality *American* products for our *American* children. We're told to buy American and support America, and are then prevented from making educated, personal choices that supports this initiative. The bottom line is that I don't want my only choice surrounding my children's health and safety to be "Pampers" or "Huggies," "Fisher Price" or "Playskool." I want options that go beyond big business. Please help to put that choice back in my hand, so that I can support it with my dollars.

Page 1/2

Nathan & Carrie Burgan  
23235 Forest Street, Oak Park, MI 48237  
248.885.4246



A fellow member of the "blogosphere" and mother of two special needs children strikes the heart when she says, "As a parent of two children with special needs that have high levels of toxins in their system due to everyday exposures, I see this as a waste of time and resources. There are REAL dangers out there to our children that are 100% being ignored by these same "concerned" politicians. But let's make sure to not sell a 1972 copy of The Pokey Little Puppy. *Eek, the horrors!* While we put REAL toxins into our kids with little to no notice, we freak out over these ridiculous things. *Wake up and spend that money on real issues.* Don't turn over rocks, dig down 15 feet, get out your flashlight, and pray to find an issue you can deal with. We have real ones out there that are so much bigger and of more concern."

Respectfully Yours,

A handwritten signature in cursive script that reads 'Carrie J.L. Burgan'.

Carrie J.L. Burgan  
Small business owner & concerned citizen  
cjborgan@gmail.com  
(248) 885-4246

A thick, black, curved graphic element that spans the width of the page, resembling a stylized horizon or a thick brushstroke.

Nathan & Carrie Burgan  
23235 Forest Street, Oak Park, MI 48237  
248.885.4246

9/8/2009

The Honorable Henry Waxman  
Chairman

The Honorable Bobby Rush  
Subcommittee Chairman

House Energy and Commerce Committee  
2125 Rayburn House Office Building  
Washington, DC 20515

The Honorable Joe Barton  
Ranking Member

The Honorable George Radanovich  
Subcommittee Ranking Member

House Energy and Commerce Committee  
2322A Rayburn House Office Building  
Washington, DC 20515

Dear Chairmen and Ranking Members:

I am writing in regard to the Committee hearing set for September 10, 2009 in which the Hon. Inez Tenenbaum, Chairman of the U.S. Consumer Product Safety Commission (CPSC), is scheduled to testify on the implementation of the Consumer Product Safety Improvement Act (CPSIA).

I am very disappointed that no one outside the CPSC has been called to testify. The CPSIA affects small businesses and average citizens who sell used "children's products." Conceivably, any person who sells an old lunchbox, used children's clothing with a zipper, or a jigsaw puzzle could be penalized under the law if the items contain lead, toxic plastics, or could be choked on by a child who is too young to use the item anyway.

Personally, I do check the recalls.gov website to investigate my children's toys, so I know how time-consuming and difficult it is to determine if something has been determined "unsafe". I can hardly imagine how difficult it must be for the local Goodwill or other secondhand stores to try and determine whether items are "safe" to sell – safe for children **and** safe from the CPSIA penalties.

In these tight financial times, shouldn't a committee hearing actually hear from the small businesses that help drive our economy? Shouldn't secondhand goods dealers who may be punished by the implementation of the CPSIA have the chance to testify that they have been requesting for over a year? I think any sensible person would answer "yes" to both.

170

Thank you for your consideration of this important matter.

Sincerely,

Sarah Chipman  
Layton, UT  
[frostandut@yahoo.com](mailto:frostandut@yahoo.com)



**THE ART & CREATIVE MATERIALS INSTITUTE, INC.**  
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September 8, 2009

The Honorable Henry A. Waxman, Chairman  
 The Honorable Joe Barton, Ranking Member  
 Committee on Energy and Commerce  
 United States House of Representatives  
 2125 Rayburn House Office Building  
 Washington, D.C. 20515

Dear Chairman Waxman and Ranking Member Barton:

Congress enacted the Labeling of Hazardous Art Materials Act (LHAMA) in 1988 which directed the Consumer Product Safety Commission (CPSC) to adopt ASTM D 4236 as a mandatory safety standard under the Federal Hazardous Substances Act (FHSA). To insure compliance with LHAMA and ASTM D 4236, The Art and Creative Materials Institute, Inc. (ACMI) added LHAMA to its well-respected almost-fifty-year-old certification program for its members. The ACMI certification program insures that children's art materials are non-toxic and adult art materials are properly labeled with cautionary warnings and safe use instructions if those art materials could produce any adverse health effect with improper use. In ACMI's program, the toxicological evaluation is performed by a team of three toxicologists at Duke University, testing required by the toxicologists must be performed by laboratories approved by the toxicologists, and the toxicologists have the added expertise of four eminent toxicologists serving on its Toxicological Advisory Board. Risk assessments utilized by Duke toxicologists are submitted to CPSC as required by LHAMA. The program essentially mandates a pre-market clearance regime for art material products. Since the adoption of LHAMA, no children's art material product certified by ACMI has been involved in a recall by the manufacturer and/or CPSC. This is an outstanding record by any account of any industry's products.

Because ACMI was very concerned that the Consumer Product Safety Improvement Act (CPSIA) passed last year by Congress would conflict with LHAMA, ACMI was successful in having Congress add the following amendment to CPSIA in Section 102 for art materials that have been certified by ACMI:

TESTING AND CERTIFICATION OF ART MATERIALS AND PRODUCTS.—A certifying organization (as defined in appendix A to section 1500.14(b)(8) of title 16, Code of Federal Regulations (or any successor regulation or ruling)) meets the requirements of subparagraph (A) with respect to the certification of art material and art products required under this section or by regulations prescribed under the Federal Hazardous Substances Act (15 U.S.C. 1261 et seq.).

LOOK FOR THESE SEALS.....



The Honorable Henry A. Waxman, Chairman  
The Honorable Joe Barton, Ranking Member

September 8, 2009

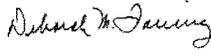
It was our understanding that the purpose of this amendment was to insure that LHAMA as implemented by ACMI continued to be the primary regulatory vehicle for children's art materials as requested in our letter at that time to Congressman Dingell, then Chairman of the House Committee on Energy and Commerce. A copy of that letter is enclosed.

Unfortunately, CPSC which administers the CPSIA cannot or will not acknowledge that exemption, even after numerous letters to and visits by ACMI with CPSC. Even though ACMI's program certifies that the children's art materials it evaluates contain contaminant total lead levels already lower than what CPSIA requires on August 14, 2011, had already banned the use of phthalates now banned by CPSIA, and also bans any other hazardous ingredients that could cause a potential acute or chronic risk of injury, this outstanding certification program might be rendered moot because member companies cannot afford both the cost for the evaluation and testing for LHAMA and the additional redundant testing required by CPSIA. Compounding the redundancy problem are the various retailer programs that require testing for art materials that is neither required by CPSIA nor LHAMA and only at their designated labs. Thus, member companies may be required to do the same tests at as many different labs as they have retailers.

Why is CPSIA testing necessary if the products have already received pre-market testing and approval? And, why should CPSIA compliance be retailer-driven? Without relief from this excessive testing burden, member companies may have to close their doors. We do not believe that this was the result that Congress intended.

We feel Congress must now act to correct this situation. We respectfully ask that Congress clarify this conflict between LHAMA and CPSIA for art materials or direct the CPSC to confirm ACMI's interpretation of its statutory exemption in CPSIA or to explain why the agency does not agree with our interpretation and what actions ACMI needs to take to achieve their agreement.

Respectfully yours,



Deborah M. Fanning, CAE  
Executive Vice President

DMF:tb

Enc: ACMI November 12, 2007 Letter to John D. Dingell and Bobby L. Rush



101 Constitution Avenue NW, Suite 800W, Washington, DC 20001  
 T: 202-742-4301 F: 202-742-4304

[AmericanMotorcyclist.com](http://AmericanMotorcyclist.com)

September 8, 2009

The Honorable Joe Barton  
 U.S. House of Representatives  
 2109 Rayburn House Office Building  
 Washington, DC 20515-4306

Dear Congressman Barton:

The American Motorcyclist Association (AMA) understands that the Subcommittee on Commerce, Trade, and Consumer Protection of the U.S. House Committee on Energy and Commerce will hold a hearing titled, "Consumer Product Safety Commission (CPSC) Oversight: Current Issues and a Vision for the Future" on Thursday, September 10. We are writing to voice our concern about the lead content requirements of the Consumer Product Safety Improvement Act of 2008 (CPSIA) and its effects on the off-highway vehicle (OHV) community.

The Act signed into law on August 14, 2008 and effective February 10, 2009, subjects any consumer product that is designed or intended primarily for a child age 12 years or under to the new limits on lead content (section 101). While the Act was passed with laudable intent, it has created a severe and unwarranted disruption to families who recreate together responsibly, a deleterious effect on youth amateur racing and is counterproductive to a well-documented safety hazard for children because some consumers will likely purchase vehicles that are physically too large for young riders.

The CPSC has voted to stay enforcement of the CPSIA that currently bans the sale of youth-model OHVs. The stay, which extends through May 1, 2011, follows a unanimous vote by Acting Chairwoman Nancy Nord and Commissioner Thomas Moore.

While we applaud the CPSC commissioners' vote to stay enforcement of the law, this does not solve the real issue, which is the law itself. Despite the stay, it is unclear whether state attorneys general will also decline to enforce the CPSIA. The sale of youth-model motorcycles and ATVs is still technically illegal. Even though a stay means that dealers would not be subject to fines or penalties imposed by the CPSC, state attorneys general would still be able to prosecute violators if they chose to do so. Youth-model motorcycles and ATVs should be exempt from the law.

To permanently address this issue, the AMA supports H.R. 1587, introduced by Representative Denny Rehberg. This legislation will exempt youth-model motorcycles and ATVs from the CPSIA.

In accordance with the foregoing, the AMA respectfully requests your consideration of our concern for the hearing regarding the lead content requirements of the CPSIA and to support H.R. 1587, which will provide immediate relief to the OHV community.

Thank you for your time and consideration of our concern. Should you have any questions or request additional information, please do not hesitate to contact me at 202-742-4302 or by e-mail at [rpodliska@ama-cycle.org](mailto:rpodliska@ama-cycle.org).

Sincerely,

A handwritten signature in black ink, appearing to read "Richard Podliska".

Richard Podliska  
Washington Representative



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MATERIALS INSTITUTE, INC.**

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Deborah M. Fanning, CAE  
Executive Vice President

Deborah S. Gustafson  
Associate Director

November 12, 2007

The Honorable John D. Dingell, Chairman  
The Honorable Joe Barton, Ranking Member  
Committee on Energy and Commerce  
United States House of Representatives  
2125 Rayburn House Office Building  
Washington, D.C. 20515

The Honorable Bobby L. Rush, Chairman  
The Honorable Cliff Stearns, Ranking Member  
Subcommittee on Commerce, Trade and Consumer  
Protection  
2125 Rayburn House Office Building  
Washington, D.C. 20515

Dear Chairman Dingell and Ranking Member Barton, Chairman Rush and Ranking Member Stearns:

ACMI has continued to study the various provisions of H.R. 4040, even after its submission of comments in a letter dated November 7, 2007. In the course of this study, it determined that one of its two recommendations for amending H.R. 4040 might not alleviate our concern that ACMI's well-established certification program would not qualify to provide manufacturers of art materials compliance to all the certification requirements established by this legislation. Therefore, we ask that you discard the second recommendation we offered which was to insert in the Section by Section Analysis or the Committee report this sentence: "Nothing in Section 102 is intended to supersede, or otherwise interfere with, Section 23 of the Federal Hazardous Substances Act, 15 U.S.C. 1277."

It dawned upon ACMI that the recommendation referenced above would limit ACMI's certification program to chronic hazards only, since Section 23 of FHSA addresses chronic hazards alone. ACMI's program also certifies that art materials in its program have been evaluated to meet the regulations for acute hazards in the FHSA as well. Given the recent experience with the recalls of so many children's products,

LOOK FOR THESE SEALS.....

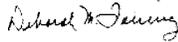


we believe acute hazards certification is as important as - and may be more important than - chronic hazards certification. Therefore, we would like to recommend that our original first proposal with a slight modification be accepted as an amendment to H.R. 4040. The modified language is as follows:

Insert after the phrase "... *and is not owned, managed, controlled, or directed by such manufacturer or private labeler*" the following **"except as for non-profit trade associations who offer their members certification programs for acute and chronic hazards under any of the Acts administered by the Consumer Product Safety Commission similar to a certifying organization as defined in FHSA 1500.14(b) (8) Appendix A."**

Thank you for your consideration of this suggestion. We apologize for not recognizing the limitation imposed by one of our original proposals. ACMI hopes that this change of position will not inconvenience you in any way.

Sincerely,



Deborah M. Fanning, CAE  
Executive Vice President

CC: Members of the Committee on Energy and Commerce

**OFFICERS**

Randy Chilton, President  
 Steven Siegel, Vice President  
 Bernie Schwarzli, Treasurer  
 Mark Pogue, Secretary



*"United effort for individual security"*

*Representing the Bulk Vending Industry Since 1950*

September 9, 2009

The Honorable Joe Barton, Ranking Member  
 House Committee on Energy and Commerce  
 2322-A Rayburn House Office Building  
 Washington, D.C. 20515

Dear Congressman Barton,

The National Bulk Vendors Association ("NBVA") represents both suppliers and operators of vended products that include toys and novelties that are dispensed from vending machines all over America. While demographics vary from product to product, we especially cater to children. On behalf of the more than 300 members of the NBVA representing thousands of bulk vendors, I urgently want to express my views on Section 103(a) of the Consumer Product Safety Improvement Act of 2008 ("CPSIA"), commonly referred to as the "tracking labels" requirement. I understand that a hearing is planned by your Subcommittee on Commerce, Trade, and Consumer Protection this Thursday, September 10, and would like to reiterate our position so that it can be expressed to the other committee and subcommittee members.

The vending industry is unique in terms of products and distribution but it is important to understand that it supports thousands of U.S. jobs, including work opportunities for disabled Americans as these groups fill our plastic capsules. Other charities, including the American Cancer Society and the Center for Missing and Exploited Children for example, raise substantial funds through sponsored vending machine sales. Most importantly; however, our industry brings smiles and enjoyment to millions of low-income American children every year for whom a vending machine may be their first (or only) purchasing experience and means of obtaining toys.

As you know, Section 103(a) requires that all "children's products" and their packaging manufactured on or after August 14, 2009 bear a permanent tracking label "to the extent practicable." On July 20, 2009, the Consumer Product Safety Commission (CPSC) issued its "Statement of Policy" concerning the implementation and enforcement of Section 103(a). The statement reflects the Commission's current interpretation of the statutory requirements of Section 103(a) and how it intends to enforce the provision for products manufactured on or after August 14, 2009.

The NBVA is pleased that the Commission's guidance explicitly recognizes that it is not "practicable" to label each bulk vended product. The policy, however, does require that the package or carton in which such products are shipped to the retailer be marked with the requisite information. Effective immediately, supplier members of the NBVA are making a concerted effort to make sure that their shipments comply with this policy.

The NBVA considers the CPSC guidance to be a positive development for the industry and a step in the right direction. However, we remain concerned about the tracking label mandate of Section 103(a) as the agency's Statement of Policy can be changed by the Commission at any time, and it is not binding on state attorneys general (who are specifically empowered to independently seek enforcement of Section 103(a)),

**NATIONAL BULK VENDORS ASSOCIATION**

7782 East Greenway Road, Suite No. 2, Scottsdale, AZ 85260

Toll Free: (888) NBVA-USA ■ Fax (480) 302-5108 ■ [www.nbva.org](http://www.nbva.org) ■ [admin@nbva.org](mailto:admin@nbva.org)

the federal courts or other interested parties. **Therefore, the National Bulk Vendors Association continues to request that Congress include an explicit exemption for bulk vended children's products in any future technical corrections bill or similar amendments to the CPSIA or other appropriate legislative vehicle.**

On behalf of the thousands of Americans whose livelihoods depend upon bulk vending (including many disabled Americans and numerous charities), we therefore respectfully ask for your consideration for binding, statutory assurance that Section 103(a) will not be applied to children's products dispensed from vending machines. Such assurance is absolutely necessary to ensure the long-term survival and success of this uniquely American industry.

Thank you for your consideration of our concern and request. Please feel free to contact me if you have any questions regarding the tracking labels requirement of the CPSIA and its effect on the bulk vending industry. In addition, you may reach our Washington, D.C. counsel on this issue, Quin Dodd of Mintz Levin, P.C., at 202-434-7435 or [qdodd@mintz.com](mailto:qdodd@mintz.com).

Sincerely,



Randy Chilton, President



September 9, 2009

Representative Henry A. Waxman, Chair  
House Energy and Commerce Committee  
2204 Rayburn House Office Building  
Washington, DC 20515

Representative Joe Barton, Ranking Member  
House Energy and Commerce Committee  
2109 Rayburn Building  
Washington, DC 20515

Representative Bobby Rush, Chair  
Subcommittee on Commerce, Trade  
and Consumer Protection  
2416 Rayburn Building  
Washington, DC 20515

Representative George Radanovich  
Ranking Member, Subcommittee on  
Commerce, Trade and Consumer Protection  
2410 Rayburn Building  
Washington, DC 20515

Dear Chairmen Waxman and Rush and Ranking Members Barton and Radanovich:

I understand that the House Subcommittee on Commerce, Trade and Consumer Protection will hold a hearing tomorrow where the new chairman of the U.S. Consumer Product Safety Commission (CPSC), Inez Tenenbaum, will testify regarding the CPSC and issues before it.

On behalf of the Toy Industry Association Inc. (TIA) and its more than 500 member companies, we respectfully urge you to focus this hearing on an examination of the unintended and harmful consequences that have been – and continue to be – caused by problems with the implementation of the Consumer Product Safety Improvement Act of 2008 (CPSIA). Now is the time to closely examine these problems and to provide relief to businesses that are struggling to comply with the Act by:

- ⊗ providing the CPSC the clear and necessary authority to promulgate practical common sense regulations that will support the CPSIA's implementation.
- ⊗ acting on legislation that will address specific areas of the CPSIA that need correcting by Congress, not the CPSC.

TIA is the not-for-profit trade association for producers and importers of toys and youth entertainment products sold in North America; our members represent more than 85% of the total domestic toy market. As a global leader in the development of sustainable toy safety initiatives, TIA and its members are committed to implementing standards and regulations that will help to keep young consumers safe. We are advocates for a national approach to safety requirements for toys and children's products and we support many of the concepts contained in the CPSIA.

However, you have likely already heard many shocking stories from constituents in your district and around the country who are struggling with the law. Efforts to implement the Act have regrettably resulted in confusion and placed unnecessary burdens on many small- to medium-sized businesses, including toy sellers that are suffering from the current economic downturn.

(continued)

Chairmen Waxman and Rush and Ranking Members Barton and Radanovich  
 September 9, 2009  
 Page 2

One month following the February 10, 2009 effective date for a number of new CPSIA requirements, TIA surveyed manufacturers/importers and retailers to collect information about the economic impact the law is having on the toy industry. At that point, we estimated that CPSIA implementation would result in a \$2 billion negative affect – nearly 10% of the total value of the U.S. domestic toy market.

The lack of clarity in the law and implementing guidelines has forced safe toys off retail shelves, small toy businesses to close, and local economies to suffer.

Chairman Jason Altmire (D-PA) and the members of the House Small Business Committee received first-hand accounts of these economic hardships during a CPSIA oversight hearing on May 14th. Following the day's testimonies, members of the majority and minority were united in calling for a further examination of the law. TIA shares this sentiment – which is why we intend to continue working closely with the CPSC and Congress to address CPSIA implementation requirements.

We applaud President Obama's decision to provide much-needed additional funding for the Commission and congratulate the President and Congress for making an excellent choice in the appointment of the Agency's new Chairman and new Commissioners. We also support Chairman Tenenbaum's approach to "common sense rulemaking" and ask Congress to help the new Chairman achieve her objectives by formally considering the current inadequacies of the CPSIA at tomorrow's hearing:

8 **The CPSC Needs Authority to Regulate Based Upon Risk Assessment**

The CPSIA contains inflexible standards which are difficult or impossible to modify. Without consideration of quantifiable risk of injury, far too many safe products are swept up into the safety legislation's overly broad reach. The CPSC needs discretion to exclude products and materials that do not represent a health risk.

9 **Retroactive Application of New Standards is Unreasonable**

The applicability of new requirements should be limited to products manufactured after the effective date, except in circumstances where the CPSC decides that exposure to a product presents a health and safety risk to children. Applying the new law retroactively has caused widespread market chaos and significant business losses.

10 **Unreasonable Implementation Timeline**

The CPSIA's unrealistic implementation deadlines did not provide the CPSC with sufficient time to manage the deluge of questions, certifications and rulemakings that were required to effectively manage product that was already in inventory. Nor was time available for firms to transition manufacturing standards or sell off inventory. This lack of lead time has led to large business losses for both manufacturers and retailers across the industry.

11 **Testing and Certification Must Be Efficient and Clear Protocols for Periodic Testing Must be Established by the CPSC on a Timely Basis**

Upstream component testing and reliance on manufacturer's supplier certification of compliance should be permitted to reduce costs and duplicative testing. In addition, the CPSIA calls for CPSC to establish by November 14, 2010 protocols and standards for ensuring that a children's product is subject to testing periodically. Those protocols and standards must be clear and practical; they should recognize measures taken upstream in the manufacturing process; and they must be promulgated by the statutory deadline to provide timely guidelines for manufacturers.

(continued)

Chairmen Waxman and Rush and Ranking Members Barton and Radanovich  
September 9, 2009  
Page 3

I am sure you and your staff are aware that these and other concerns surrounding the CPSIA's new requirements were the subject of an April 2, 2009 Congressional Research Report (CRS) titled: *Consumer Product Safety Commission: CPSIA Implementation*.

Thank you for your time and interest in toy safety issues. TIA stands ready to meet with you to discuss these issues in more detail. Should you have any questions or if TIA can be of future assistance, please do not hesitate to contact me (ckeithley@toyassociation.org; 646.520.4841) or Ed Desmond, TIA's Executive Vice President for External Affairs (edesmond@toyassociation.org; 202.857.9608).

Sincerely,

A handwritten signature in black ink, appearing to read "Carter Keithley". The signature is written in a cursive style with a large initial "C".

Carter Keithley  
President

Copy: Michelle Ash  
Tim Robinson  
Will Carty  
Shannon Weinberg

9-8-09  
 SEP 04 2009  
*Bruce Shannon*  
*Will*



September 4, 2009

House Energy and Commerce Committee  
 2322A Rayburn House Office Building  
 Washington, DC 20515

The Honorable Henry Waxman Chairman	The Honorable Bobby Rush Subcommittee Chairman
The Honorable Joe Barton Ranking Member	The Honorable George Radanovich Subcommittee Ranking Member

Re: Format of the House Subcommittee on Commerce, Trade, and Consumer Protection Hearing, "Consumer Product Safety Commission Oversight: Current Issues and a Vision for the Future", scheduled for Thursday, September 10

Dear Chairmen and Ranking Members:

We are writing in regard to the subcommittee hearing set for September 10, 2009, the first Commerce Committee hearing on consumer product safety since the CPSIA was passed over a year ago. We are very disappointed to learn that the committee will not be taking this opportunity to hear from any small businesses affected by the CPSIA. Indeed, we have learned that CPSC Chair Tenenbaum will be the only person invited to testify.

While we have full faith in the abilities of Ms. Tenenbaum and believe she is working to apply common sense interpretations to the CPSIA, we do not believe that she can represent the full scope of the CPSIA's impact on responsible American small businesses. Nor do we believe that the unintended consequences of the CPSIA can be solved through the CPSC's rulemaking. A technical correction is required, and we would like the opportunity to tell your committee why.

Our businesses have been burdened by a law designed to fix a problem created by irresponsible multi-national corporations such as Mattel. The small manufacturers, crafters, and retailers represented by our alliance have impeccable safety records, yet we are burdened by excessive compliance costs while Mattel has once again been trusted to police itself.

Now is the time for Congress to hear the voices of small businesses. Now is the time to show that laws can be written for the common good, not just for the interests of large, well-connected corporations such as Mattel. Now is the time to invite small businesses, including a representative of our alliance, to speak truth to Congress about how the CPSIA is devastating our businesses and our livelihoods.

As parents, consumers and small business owners, we all believe that children's products should be free of toxins and safe for our children. We are in business due to our sincere desire to put forth quality products. Unfortunately, the CPSIA has made this endeavor much more difficult than it should be.

Please, help us fix the CPSIA. Help us continue to provide unique clothes and playthings for America's children. Please, invite us to testify.

Respectfully,

The Handmade Toy Alliance

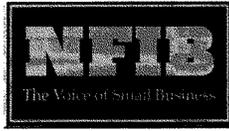
Contact information and a listing of all 382 business members of the Handmade Toy Alliance is available at <http://www.handmadetoyalliance.org/members-of-the-handmade-toy-alliance>

[savehandmadetoys@gmail.com](mailto:savehandmadetoys@gmail.com)  
[www.handmadetoyalliance.org](http://www.handmadetoyalliance.org)

Board members:

Cecilia Leibovitz, Craftsbury Kids, VT  
Jill Chuckas, Crafty Baby, CT  
Jolie Fay, Skiping Hippos, OR  
Rob Wilson, Challenge & Fun, MA  
Kate Glynn, A Child's Garden, MA

Dan Marshall, Peapods Natural Toys, MN  
Mary Newell, Terrapin Toys, OR  
Heather Flottmann, Lilliputians, NY  
John Greco, Greco Woodcrafting, NJ



September 10, 2009

The Honorable Henry Waxman  
 Chairman  
 Committee on Energy and Commerce  
 U.S. House of the Representatives  
 2125 Rayburn House Office Building  
 Washington, DC 20515

The Honorable Bobby Rush  
 Chairman  
 Subcommittee on Commerce, Trade, and  
 Consumer Protection  
 Committee on Energy and Commerce  
 U.S. House of the Representatives  
 2125 Rayburn House Office Building  
 Washington, DC 20515

The Honorable Joe Barton  
 Ranking Member  
 Committee on Energy and Commerce  
 U.S. House of the Representatives  
 2322A Rayburn House Office Building  
 Washington, DC 20515

The Honorable George Radanovich  
 Ranking Member  
 Subcommittee on Commerce, Trade, and  
 Consumer Protection  
 Committee on Energy and Commerce  
 U.S. House of the Representatives  
 2322A Rayburn House Office Building  
 Washington, DC 20515

Dear Chairmen Waxman and Rush, and Ranking Members Barton and Radanovich,

On behalf of the National Federation of Independent Business (NFIB), the nation's leading small business advocacy organization, I want to thank you for holding today's hearing on the Consumer Product Safety Commission. NFIB is hopeful that today's hearing will address the negative effects the Consumer Product Safety Improvement Act (CPSIA) – the Commission's chief concern – has had on America's small businesses.

In the current economic recession, the CPSIA further cripples small businesses by requiring that more time, money and labor be devoted to government regulations, diverting these precious resources away from job creation. In the months since the law's enactment, NFIB's Small Business Economic Trends (SBET) survey has continued to report that small business owners have a negative view of the economy. While our members understand that the intent of the 2008 law is to protect children, small businesses are concerned that the law will continue to cause serious economic hardships for many law-abiding small businesses that manufacture and sell safe children's products. During a time of economic uncertainty, new costs and mandates inhibit economic growth and may force small businesses to raise prices, cut jobs or shut their doors.

NFIB has heard from members nationwide from diverse industries about how the CPSIA has severely impeded their businesses. For example, an NFIB member in the Midwest owns a small retail children's store with over 100 different products on the shelves and about \$90,000 in inventory. Attempting to comply with the myriad of new regulations and deadlines in CPSIA has been a significant business hurdle for him, including but not limited to labeling, testing and certification of his inventory. Another NFIB member manufactures educational science products geared towards high school and college science classes, although some school districts may choose to use his products in classrooms with children under age twelve. The largest cost he has faced under the new law continues to be the countless hours spent researching the new law. Because he buys from component suppliers and sells to catalogue retailers, multiple questions arise as to who is responsible for the testing, labeling and certification of the parts he purchases and the products he sells. NFIB urges Congress to act on legislation that will alleviate these burdens.

National Federation of Independent Business

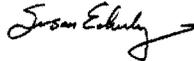
1201 F Street NW \* Suite 200 \* Washington, DC 20004 \* 202-554-9000 \* Fax 202-554-0496 \* [www.NFIB.com](http://www.NFIB.com)

In particular, NFIB strongly supports allowing for "component part testing" which is necessary to prevent duplicative and expensive testing. Small manufacturers would be permitted to use the testing and certification that are obtained by their component suppliers (if all components are certified, the final product is certified). Component part testing would in particular help alleviate some of the financial, labor and administrative burden that small businesses face in complying with the CPSIA. NFIB strongly supports legislation that would amend the current law to allow for component part testing.

Additionally, the Commission should exercise a more practical interpretation of the current law as it did when resale establishments were exempted from the testing requirements. This exemption and others stays of enforcement are a good start. If the Commission does not have the authority under current law to make common sense exemptions, then Congress must act to provide the Commission with such authority. NFIB remains hopeful that Congress and the Commission can begin to work together to address additional burdens that may be fixed through the regulatory and legislative process.

NFIB is encouraged that during her Senate confirmation hearing, Chairman Inez Tenenbaum committed, "I will also ensure that industry knows that their views will be heard and considered," and that "regular and timely public communication is critical to keeping the public informed about consumer product safety." Thank you again for holding this hearing. NFIB looks forward to working with the Commission and Congress on this issue as the 11<sup>th</sup> Congress continues.

Sincerely,



Susan Eckerly  
Senior Vice President  
Public Policy

cc: Members of the House Committee on Energy and Commerce



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 Rockville, Maryland  
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[www.goodwill.org](http://www.goodwill.org)

September 9, 2009

The Honorable Henry Waxman, Chair  
 Energy and Commerce Committee  
 2204 Rayburn House Office Building  
 Washington, DC 20515

The Honorable Joe Barton, Ranking  
 Member  
 Energy and Commerce Committee  
 2109 Rayburn House Office Building  
 Washington, DC 20515

The Honorable Bobby Rush, Chair  
 Commerce, Trade, and Consumer  
 Protection Subcommittee  
 2416 Rayburn House Office Building  
 Washington, DC 20515

The Honorable George Radanovich,  
 Ranking Member  
 Commerce, Trade, and Consumer  
 Protection Subcommittee  
 2410 Rayburn House Office Building  
 Washington, DC 20515

Dear Chairs and Ranking Members:

As the Commerce, Trade, and Consumer Protection Subcommittee conducts a hearing titled, "Consumer Product Safety Commission Oversight: Current Issues and a Vision for the Future" on Thursday, September 10, Goodwill Industries International, Inc. (Goodwill Industries) urges you to consider the unintended consequences that the Consumer Product Safety Improvement Act of 2008 (CPSIA) (P.L. 110-314) have affected nonprofit resellers, such as Goodwill, that sell donated children's products to support the delivery of mission services. It is important that future hearings take into account the concerns that the business community, especially resellers, have raised over the implementation of the CPSIA.

Goodwill Industries' network of 159 local Goodwill agencies provides jobs, job placement and training to people with disabilities and other barriers to employment through revenues raised in donated goods stores. Goodwill Industries wholeheartedly agrees with those who supported passing the CPSIA in order to create a safety net that protects all children from exposure to products that have dangerous lead levels. Throughout Goodwill's more than 100 year history, our first priority has always been the safety and well-being of the people that we serve, the families who shop at our stores, and our donors and community partners. Goodwill Industries has a long and distinguished track record of working with the CPSC to ensure that potentially dangerous products never make it to our store shelves. Before a product is placed for sale at a local Goodwill store, we confirm that the product is not on the CPSC's product recall list. Products found on the recall list are disposed of in compliance with the law.

As you consider the challenges that the CPSC currently faces and its vision for the future, it is worth noting that Goodwill Industries has partnered with the CPSC in a public awareness campaign to work in concert to educate shoppers and employees about the hazards of certain products and proper recall procedures. Goodwill Industries recognizes Chairwoman Tenenbaum's efforts. While the unintended consequences of the CPSIA

certainly has the potential to have negative impact on local Goodwills and the communities they serve, Goodwill Industries has been pleased to be part of this collaborative effort. Goodwill Industries looks forward to being part of ongoing discussions and solutions with the CPSC and Congress regarding implementation of the CPSIA and its potential to negatively impact our communities, as we continue to ensure the safety of the people we serve.

Sincerely,

A handwritten signature in black ink, appearing to read "Jim Gibbons", with a long horizontal flourish extending to the right.

Jim Gibbons  
President and CEO

cc: Commerce Trade, and Consumer Protection Subcommittee Members

JOHN D. DINGELL  
16TH DISTRICT, MICHIGAN  
CHAIRMAN  
COMMITTEE ON  
ENERGY AND COMMERCE  
CO-CHAIR  
HOUSE GREAT LAKES  
TASK FORCE  
MEMBER  
MIGRATORY BIRD  
CONSERVATION COMMISSION

Congress of the United States  
House of Representatives  
Washington, DC 20515-2215

March 4, 2009

WASHINGTON OFFICE:  
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(734) 243-1849

301 WEST MICHIGAN AVENUE  
SUITE 305  
YPSILANTI, MI 48197  
(734) 481-1100

The Honorable Nancy A. Nord  
Acting Chairman  
U.S. Consumer Product Safety Commission  
4330 East West Highway  
Bethesda, MD 20814

The Honorable Thomas Hill Moore  
Commissioner  
U.S. Consumer Product Safety Commission  
4330 East West Highway  
Bethesda, MD 20814

Dear Acting Chairman Nord and Commissioner Moore:

As an author of the original Consumer Product Safety Act in 1972 and a long-standing advocate for better protections for our Nation's consumers, I wholeheartedly support a stronger regulatory framework to ensure the safety of children's products. Nevertheless, I share the reasoned concerns of my colleagues, House Committee on Energy and Commerce Chairman Waxman, Subcommittee on Commerce, Trade, and Consumer Protection Chairman Rush, Senate Committee on Commerce, Science, and Transportation Chairman Rockefeller, and Subcommittee on Consumer Protection, Insurance, and Automotive Safety Chairman Pryor, about the implementation of the Consumer Product Safety Improvement Act (PL 110-314, "the Act"). In particular, I am troubled that the Act includes unrealistic deadlines for rulemakings and compliance, as well as too little implementation discretion for the Consumer Product Safety Commission (CPSC), both of which are exacerbated by CPSC's lack of adequate resources, both in terms of funding and staff.

In describing the implementation of the Act, Acting Chairman Nord's January 30, 2009, letter to the Congress maintains, "the timelines in the law are proving to be unrealistic, and [CPSC] will not be able to continue at this pace without a real risk of promulgating regulations that have not been thoroughly considered." Moreover, the letter states, "Although [CPSC] staff has been directed to move as quickly as possible to complete its work, short-circuiting the rulemaking process gives short shrift to the analytical discipline contemplated by the statute." In light of these statements, I would appreciate your candid responses to the following questions, which will assist me and my colleagues in our consideration of common-sense and workable solutions to some of the more pressing problems that have arisen during the Act's implementation:

The Honorable Nancy A. Nord  
The Honorable Thomas Hill Moore  
Page 2

1. To what extent has robust implementation of the Act been hampered by CPSC's lack of resources? What levels of funding and staffing does CPSC believe necessary for proper implementation of the Act?
2. Given the paramount importance of ensuring children's safety and the overall mission of CPSC, to what extent are the deadlines in the Act practicable for CPSC and industry to meet acting with all deliberate speed? If these deadlines are not practicable, what revisions to them does CPSC suggest?
3. Does CPSC have quantitative data concerning any negative impact of the Act (*i.e.*, the lead and phthalate limits and testing requirements) on small manufacturers of children's products, and if so, would CPSC please provide them? What information does CPSC have on any such negative impact of a more anecdotal nature?
4. Does CPSC have any suggestion for how to mitigate any such economic impact of the Act on small manufacturers of children's products (*e.g.*, component testing for lead and phthalate content) that, in accordance with the intent of the Act and the CPSC's mission, will not compromise the health and safety of children using them?
5. What information has CPSC received about the impact of the Act on the availability of second-hand products for children, especially clothing? It is my understanding that many second-hand stores now refuse to sell children's products. Does CPSC have any suggestions for how to mitigate any negative effects of the Act on second-hand stores for children's products, especially in light of the recent economic downturn and the consequent increased need for low-cost sources of children's clothing?
6. Does CPSC believe that the age limit contained in the Act's definition of "children's products" (*i.e.*, 12 years and under) is appropriate? If not, what should the age limit be? Further, should CPSC have the discretion to lower the age limit for certain groups of children's products for which the risk of harm from lead or phthalate exposure is remote to non-existent (*e.g.*, snaps or zippers on children's clothing)?
7. Although some youth all-terrain vehicles (ATVs) and youth motorcycles are intended for use by children under 12 years of age, does CPSC believe it is necessary that these products be tested for lead and phthalate content? Similarly, does CPSC believe that these products present a risk to children for the absorption of phthalates or lead?
8. In light of recent court decisions that the lead and phthalate content restrictions are retroactively applicable, does CPSC have concerns about the effect on the environment of the disposal of inventories of non-compliant children's products?

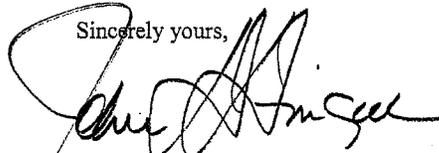
The Honorable Nancy A. Nord  
The Honorable Thomas Hill Moore  
Page 3

9. I understand that, since early December 2008, CPSC has had access to a large number of lead content test results for finished "ordinary books" (*i.e.*, books published in cardboard or paper by conventional methods and intended to be read by or to children age 12 or under) and their component materials (*i.e.*, paper, paperboard, ink, adhesives, laminates, and bindings). Have CPSC staff reviewed those test results? What do those test results indicate about such ordinary books and component materials in connection with the statutory lead limits prescribed in Section 101(a) of the Act? Does CPSC have any recommendations regarding how to mitigate the burdens that the testing and certification requirements of the Act, and especially the retroactive applicability of those requirements to inventory, could otherwise impose on publishers, printers, and retail sellers of such ordinary books, as well as on libraries, schools, charities and other second-hand distributors of such ordinary books, including those published before 1985?
10. In general, does CPSC believe that the Act was written with too little implementation discretion for the Commission? If this is the case, for which issues (*e.g.*, third party testing requirements) does CPSC require more discretion?

Please provide your responses to my office by **no later than the close of business on Friday, March 13, 2009**. I intend to work with my colleagues in the House and Senate to resolve these issues, as well as call on Chairman Waxman and Chairman Rush to hold hearings on problems arising from Act's implementation. Your responses to these questions will be invaluable in preparing Members of Congress for a frank discussion about several of the Act's apparent shortcomings. Should you have any questions, please feel free to contact me or Andrew Woelfling on my staff at 202-225-4071.

With every good wish,

Sincerely yours,



John D. Dingell  
Chairman Emeritus  
Committee on Energy and Commerce

cc: Representative Nancy Pelosi, Speaker of the House of Representatives  
Representative Steny Hoyer, Majority Leader  
Representative Henry A. Waxman  
Representative Rick Boucher  
Representative Frank Pallone, Jr.  
Representative Bart Gordon

The Honorable Nancy A. Nord  
The Honorable Thomas Hill Moore  
Page 4

Representative Bobby L. Rush  
Representative Anna G. Eshoo  
Representative Bart Stupak  
Representative Eliot L. Engel  
Representative Gene Green  
Representative Diana DeGette  
Representative Lois Capps  
Representative Mike Doyle  
Representative Jane Harman  
Representative Jan Schakowsky  
Representative Charles A. Gonzalez  
Representative Jay Inslee  
Representative Tammy Baldwin  
Representative Mike Ross  
Representative Anthony D. Weiner  
Representative Jim Matheson  
Representative G.K. Butterfield  
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Representative Roy Blunt  
Representative Steve Buyer  
Representative George Radanovich  
Representative Joseph R. Pitts  
Representative Mary Bono Mack  
Representative Gregg Walden  
Representative Lee Terry

The Honorable Nancy A. Nord  
The Honorable Thomas Hill Moore  
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Representative Mike Rogers (MI)  
Representative Sue Wilkins Myrick  
Representative John Sullivan  
Representative Tim Murphy  
Representative Michael C. Burgess  
Representative Marsha Blackburn  
Representative Phil Gingrey  
Representative Steve Scalise  
Senator Harry Reid, Majority Leader  
Senator John D. Rockefeller, IV  
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Senator Mel Martinez  
Senator Mike Johanns



U.S. CONSUMER PRODUCT SAFETY COMMISSION  
4330 EAST WEST HIGHWAY  
BETHESDA, MD 20814

NANCY A. NORD  
ACTING CHAIRMAN

TEL: (301) 504-7901  
FAX: (301) 504-0057

March 20, 2009

The Honorable John D. Dingell  
U.S. House of Representatives  
2328 Rayburn House Office Building  
Washington, DC 20515

Dear Representative Dingell:

Thank you for your letter of March 4, 2009, regarding the U.S. Consumer Product Safety Commission's (CPSC) implementation of the Consumer Product Safety Improvement Act of 2008. Recognizing and respecting the knowledge that the CPSC career staff has acquired in implementing this new law, I asked them to prepare answers to the important questions that you asked in your letter. Their responses are enclosed.

Since its passage last August, the CPSC staff has been working tirelessly to implement this comprehensive legislation in the most efficient and effective manner possible given the limits of our resources and the time constraints mandated in the law. As you will note in their responses, they have identified some proposed refinements to the law based on their front-line experience with it.

We share your commitment to better protection of our nation's consumers, and we very much appreciate your long-standing advocacy and support of the CPSC. After reviewing the staff's responses, please let me know if you have additional questions or comments.

Sincerely,

A handwritten signature in cursive script that reads "Nancy Nord".

Nancy A. Nord  
Acting Chairman

Enclosure

cc: Commissioner Thomas Moore

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Representative Dingell

Representative Nancy Pelosi, Speaker of the House of Representatives  
Representative Steny Hoyer, Majority Leader  
Representative Henry A. Waxman  
Representative Rick Boucher  
Representative Frank Pallone, Jr.  
Representative Bart Gordon  
Representative Bobby L. Rush  
Representative Anna G. Eshoo  
Representative Bart Stupak  
Representative Eliot L. Engel  
Representative Gene Green  
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Representative Mike Doyle  
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UNITED STATES  
CONSUMER PRODUCT SAFETY COMMISSION  
4330 EAST WEST HIGHWAY  
BETHESDA, MD 20814

Date: March 20, 2009

TO : Acting Chairman Nancy Nord  
Commissioner Thomas Moore

FROM : General Counsel *CAF*  
Assistant Executive Director for Compliance *JEM*  
Assistant Executive Director for Hazard Identification and Reduction *rh*  
Assistant Executive Director for Financial Management, Planning and  
Evaluation *EEQ*

SUBJECT : Responses to Letter from the Honorable John D. Dingell

Chairman Nord has asked us to respond to the questions recently received from Representative Dingell. The following responses have been prepared by career staff at the U.S. Consumer Product Safety Commission (CPSC).

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***1. To what extent has robust implementation of the Act been hampered by CPSC's lack of resources? What levels of funding and staffing does CPSC believe necessary for proper implementation of the Act?***

The CPSC has made implementation of the Consumer Product Safety Improvement Act (CPSIA) our highest priority. Since August 2008, the agency has initiated and advanced over 20 rulemaking activities required by the CPSIA which is an unprecedented number for this agency or any other of this size, published enforcement guidance and policies to enhance compliance with the new law, conducted numerous meetings with stakeholders, developed a special website dedicated to the CPSIA, responded to questions from the public numbering in the thousands, and generally focused the agency's limited scientific, legal, technical, educational, training and administrative resources on CPSIA implementation requirements.

Because requested funding for implementation of the new law was not forthcoming during the critical first six months when many of the CPSIA requirements needed to be initiated or completed, implementation of the CPSIA has impacted our ongoing safety mission by delaying and deferring work in many other areas. While work has been deferred or delayed on these activities -- such as rulemaking activities on portable generators and voluntary standards work on electrical, fire, mechanical, chemical and children's hazards -- some of CPSC's ongoing safety work such as hazardous product investigations and recalls could not be deferred. This has limited our ability to advise you on how to fully reallocate existing staff resources to implementation of the CPSIA.

Moreover, issues related to the accreditations of laboratories and the increasing number of requests for exclusions from the Act's provisions have caused unanticipated additional demands on staff resources, at the same time that the staff has been implementing the Virginia Graeme

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*The statements in this letter do not necessarily reflect the views of the Commission or any individual Commissioner.*

Baker Pool and Spa Safety Act (which became effective in December 2008), and the Children's Gasoline Burn Prevention Act (which became effective in January 2009). This has severely overstretched the agency staff and has begun resulting in delays in implementation that will continue until we are able to fully hire and otherwise maximize the resources that have just been provided to the agency for the second half of fiscal year 2009.

Three examples of the burden and complexity presented by the work on these issues are: (1) the continuing need to process and review applications for laboratory accreditation, including applications from government and proprietary firewalled laboratories, a process initiated by the CPSIA and one that the agency is handling for the first time in its history; (2) the need for further refinement of guidance on the scope of the phthalates ban and, in particular, defining a testing method and dealing with compliance questions regarding the chemistry and carbon chain branching that determines whether a product contains a banned phthalate; and (3) the engineering issues raised by the Pool and Spa Safety Act and the need to reconcile state regulations on health and safety issues such as water quality with the need to replace drain covers as required by that Act. The Commission staff cannot address these and similar matters all at once, yet delay has serious economic impacts on the affected parties which no one anticipated would happen at the same time as the current economic downturn.

As we implement each new requirement, we are seeing unanticipated issues arise, and we are learning more of the far-reaching effects of the CPSIA and there will undoubtedly be more to learn. In August 2008 following passage of the Act, staff estimated that it would require a full annual increase of \$21.1 million and 59 FTEs to begin implementing the new legislation in Fiscal Year 2009. That same month, the Commission submitted an amendment in this amount to the then-pending President's Budget Request through the Office of Management and Budget, as well as directly to Congress. In November 2008 a revised amendment was provided to Congress to reflect CPSC's requirements for only the second half of the fiscal year. Through the first six months of implementing the CPSIA, none of this additional funding was received by the Commission.

The funding amount in the Commission's revised amendment has just been approved by Congress. While we will use these funds to immediately and aggressively hire and train new staff, the six-month delay in funding will cause continued deferrals until such time that the agency fully absorbs the new appropriation. For Fiscal Year 2010 the Commission has requested additional funding to continue implementation of the CPSIA.

***2. Given the paramount importance of ensuring children's safety and the overall mission of the CPSC, to what extent are the deadlines in the Act practicable for CPSC and industry to meet acting with all deliberate speed? If these deadlines are not practicable, what revision does CPSC suggest?***

Mandated Deadlines: Effect on Safety Priorities and Staff Workloads

In the CPSIA, Congress set an aggressive regulatory agenda for the CPSC over the course of the first two to three years after enactment. The work required by the CPSIA is in addition to the

Commission's ongoing regulatory activity in a variety of areas, including upholstered furniture, portable generators and other important standards development activities, as well as our ongoing compliance work in evaluating and recalling products that present hazards to consumers. As with any regulatory agency, CPSC's safety work must be prioritized to deal with the most significant risks; however, the deadlines mandated in the CPSIA have jeopardized our ability to meet Commission priorities and proven to be too much for a relatively small agency to handle all at once. Timely implementation is important, but the flexibility to prioritize our work to deal with the most serious risks is equally important to maximize effectiveness and do the greatest good with the resources that we have been given.

While the CPSIA mandates more than 40 separate action items for the Commission to undertake, that number understates the agency workload that results from each of those mandates. For example, there is no requirement to adopt an interpretative rule defining "child care article" and "toy" under section 108. Yet the Commission has been inundated with thousands of product specific inquiries about what types of products fall within those definitions, from shoes to sporting goods to electronic games. An interpretive rule is our recommended way to address this issue and adds to our rulemaking burden.

The action item count also does not include acting on requests for exemptions from the lead limits provision, nor does the list contemplate making "determinations" on classes of materials or products not covered by the ban on lead in children's products. Because the statute did not permit the agency to exempt products from the scope of the definition of children's product, the staff has been engaged in a process of narrowing the scope of materials likely to include lead in order to provide relief to small businesses and home crafters faced with crippling costs of testing and certification requirements. Many of those businesses are now asking the Commission to begin the same process of exemption of materials with regard to phthalates. As another example, consideration of component testing is not a part of the list of rulemaking activities in the CPSIA, yet it is a challenging issue to consider in implementing its requirements.

There are other activities required of the Commission in the CPSIA that require resources and time that are not evident in the list of required rulemakings. The resource needs have been enormous, ranging from projects so basic as educating headquarters and compliance field staff on the scope of the new regulatory requirements of the Act to the more complex work of updating the Commission's regulations to permit the use of its new authorities with regard to refusing admission of imports. Updating our regulations and coordinating with Customs and Border Protection to allow for a process for a hearing upon refusal of admission requires significant agency resources, as does developing a process for bonding shipments to cover the cost of destruction and related import activities.

Suffice it to say that each of the various initiatives in the Act -- whether it be the lead and phthalates limits, the testing and certification regime, the import provisions, or the new database and information technology upgrades -- will require significantly more time to implement than anyone originally anticipated. Having all of that done simultaneously would have taxed the agency even if we had been given additional funding from the start. Moreover, the agency has significant ongoing work that remains, as well as two other new statutes that it must implement

this year, the Virginia Graeme Baker Pool and Spa Safety Act and the Children's Gasoline Burn Prevention Act.

The deadlines have proven to be impracticable for our staff to meet and are presenting significant problems for the agency to solve. The Commission staff must have some relief from the deadlines imposed.

Practical Solutions: Prioritizing Workload Based on Risk or Extending Deadlines

The following suggestions, ideally in combination, would help ameliorate the issues discussed above.

- o Use of Risk Assessment to Establish Priorities

Use of risk assessment methodology would allow the Commission to establish priorities, provide for common sense exemptions, and set CPSIA implementation deadlines. Congress took this approach, to some degree, when setting the initial testing and certification deadlines. Using recall frequency and, to a lesser degree, the severity of possible injuries, Congress determined that cribs, pacifiers, small parts, lead in paint, and lead in children's metal jewelry would lead the children's product testing and certification effort.

However, by this June the Commission must accredit laboratories for third-party testing to all other children's product safety rules, which includes any new or previously existing rule applicable to a product intended for children 12 years of age or younger. The agency will be pushed to meet that deadline as the staff will need to issue accreditation procedures, and all related testing procedures, for the many rules applicable to children's products at that time, including the enormously complex requirements of the ASTM F963-07 Toy Safety Standard. All of this will take place simultaneously with work we are doing to open CPSC's new laboratory facilities.

Examples of Inefficiencies: Furthermore, inefficiencies have been created given the tight timeframes of the Act. For example, under section 102 of the CPSIA, the Commission is required to publish accreditation procedures for laboratories testing baby walkers, bouncers and jumpers by March 12, 2009. However, the existing regulations for baby walkers and bouncers are outdated. The Commission through its enforcement actions has been requiring compliance to the voluntary standard rather than the outdated regulations, and for the most part industry is complying with the voluntary standard. It is inefficient for the staff to accredit laboratories to test to outdated regulations.

The baby walker standard will be one of the first two rules the Commission handles under the series of new consumer product standards required for durable infant products under CPSIA section 104, and therefore, the most efficient (and common sense) resource allocation would be to accredit laboratories for testing when we announce the new baby walker standard in February 2010. Because the statute was written without such flexibility, we must develop an approach to deal with the outdated baby bouncer, walker, and jumper standard, which may include withdrawing the outdated standard to avoid accrediting laboratories to standards no one follows

and to clarify that there is no need for industry to take a step backwards to test to standards that will be updated in a matter of months.

From our standpoint, an ideal solution to these challenges faced by our staff would be for Congress to let the Commission decide what level of testing is required for which products, allowing the Commission to prioritize based on risk and tackle any problems that need to be addressed in the most efficient manner. Alternatively, Congress could continue to require certification and third-party testing for all children's products but allow the Commission to prioritize as to when the testing to each children's product safety rule will begin, so that it can roll those out on a timetable that is based on its discretion and expertise. To do this right, we need to:

- provide our stakeholders with a list of all standards that are applicable to a children's product;
- identify which children's products need to comply with which standards;
- define the test methods for each standard and whether they make sense for all of the different products covered;
- accredit the laboratories for testing to each standard; and
- develop a process for inspecting certificates.

All of that takes time and the ten months the CPSIA gave us to accomplish this task has not proven to be workable.

The wholesale release of "all other" children's product standards in June 2009 may further stress manufacturers, importers, and retailers while providing marginal improvement in children's safety for many of the products. A methodical, pragmatic approach to the release, based on priorities determined by CPSC staff, would facilitate a smoother rollout while addressing first the products presenting the greater risk to children. This allows CPSC staff the flexibility to prioritize tasks, manage our workload, and assure greater safety without an unnecessarily burdensome impact on product sellers.

- Extend Deadlines

Another alternative is to move certain of the dates for implementation in the CPSIA to allow the Commission the time to provide additional implementation guidance. The most challenging deadlines for compliance were those that went into effect on February 10, 2009, requiring retroactive compliance to the new lead and phthalate content limits. The breadth of products covered by the definition of children's products covered by the lead limit, i.e., any product designed or intended primarily for a child 12 years of age or younger, implicated numerous industries that had not understood that their products would be subject to the new lead provisions.

The question asks us to comment on the impact of the deadlines on industry. Whether it be makers of books, bikes, or baseball bats, every industry needed more time to determine which, if any, of its products were covered under the definition of children's product, test those products for compliance, and develop new methods of manufacture to eliminate the lead if it was present

in the product. The scope of products covered by the new regulation and the amount of inventory implicated went well beyond what many may have contemplated. Our information is incomplete but we are told that millions of products wait in storage warehouses for return and destruction. Retailers have indicated that most of these products do not contain accessible lead, and a real question exists in our staff's mind as to whether they contain accessible lead in a sufficient amount to be anything other than a *de minimis* risk but simply were unable to meet the standards that took effect in February. It will be even more difficult for these products to meet the stricter standards to come. These challenges faced by industry have a direct impact on CPSC staff resources and our ability to meet deadlines given the need to respond to their inquiries.

Another approach to the deadlines is to allow the Commission more discretion to move an effective date for a given product or class of products in certain circumstances. The CPSIA does not permit the Commission to delay the effective date of any of the new standards to deal with a problem such as the lead in bike tire valves where the risk to a child is exceedingly small but still measurable, and the economic impact is substantial. In cases such as these, some reasonable amount of time should be allowed to reengineer the product to develop an alternative that can meet the new lead limits.

***3. Does CPSC have quantitative data concerning any negative impact of the Act (i.e., the lead and phthalate limits and testing requirements) on small manufacturers of children's products, and if so, would CPSC please provide them? What information does CPSC have on any such negative impact of a more anecdotal nature?***

CPSC staff does not have data on the total value of impacted inventories, lost sales, disposal costs, and other costs likely to be incurred by small manufacturers because of the CPSIA; however, information of an anecdotal nature, that has not been verified by CPSC staff, puts the impact in the billions of dollars range.

Industry Estimates

For example, the Motorcycle Industry Council reported in a February 26, 2009, press release that the new lead rules would result in an annual impact of \$1 billion on their industry. In a request for a moratorium on the retroactive application of the lead ban, the American Chamber of Commerce in Hong Kong estimated that the impact on their members producing children's wearing apparel would run in excess of \$300 million. In a letter to the CPSC, counsel to a major mass retailer stated that a client estimated their cost to test inventory at \$1.4 million and projected inventory losses of \$30 million. Another client estimated the value of their unsalable inventory at \$7 million. It was also reported in a March 5, 2009, article in the Wall Street Journal, that the Toy Industry Association estimated inventory losses valued in the range of \$600 million.

CPSC Testing Estimates

CPSC staff has estimated that the cost for third-party testing of product for lead and phthalates would range from several hundred dollars to several thousand dollars per product tested.

depending on the number of product components requiring testing. Based on information obtained from testing laboratory price lists and quotes, the cost to test for the lead content of a substrate appears to range between about \$50 and \$100 per tested component. In a recent public meeting, industry representatives stated that testing of the 233 various components of a bicycle, valued at \$50, cost one of their members approximately \$14,000. Less information is available about the cost of testing products for phthalates, but the limited information obtained from price quotes and laboratory presentations to CPSC staff suggests the best estimate for the cost of phthalate testing at this time ranges from \$300 to \$500 per tested component. The cost to test for phthalates appears to vary widely from market to market. In a recent CPSC public meeting on phthalates, one participant told of receiving quotes for the testing of a product ranging from \$7,000 in Asia to \$22,000 in the United States. Because these tests tend to be destructive, manufacturers also bear the expense of lost material, labor, and overhead associated with production of the products tested.

Economies of scale provide an advantage to larger volume manufacturers, relative to their smaller volume counterparts, as they can absorb these testing costs over a larger production volume. Spread over this larger volume, the incremental increase to the cost of each product is much smaller for the large manufacturer versus the much smaller manufacturer. In short, the heavier burden falls to the smaller volume business. When the Commission establishes random sampling requirements (as part of the required rulemaking on periodic testing in Section 102(b)), testing costs will increase over current levels for manufacturers of all sizes.

The exclusion of most fabric from the third-party testing requirements will provide only limited relief for apparel manufacturers, including small manufacturers. In a public meeting with CPSC staff, several apparel retailers reported finding virtually no lead in fabric, but they did find lead in about 2% of the tests on hard items, such as buttons, zippers, snaps, and fasteners. Since most apparel items have some non-fabric items, there will still be testing requirements for most apparel items. Moreover, under the new restrictions the presence of lead in fasteners used on clothing has had a negative impact on the second-hand market for children's clothing in the United States.

Although testing children's products, as applicable, for lead and phthalates has received the most attention, many products will be subject to additional third-party testing requirements. For example, cribs must be tested for compliance to the crib safety standards at 16 CFR part 1508. Toys are also subject to testing for compliance to applicable provisions of the Toy Safety Standard, including testing for additional heavy metals, such as arsenic, cadmium and chromium. We have no quotes for these tests; however, it is probable that the major factor in the cost of the tests will be the labor time required to conduct the tests. Once again, given the destructive nature of the testing, the manufacturer will also bear the expense of lost material, labor, and overhead.

It is important to keep in mind the wide expanse of goods falling under the definition of "children's products" and subject therefore to third-party testing requirements. Beyond toys and durable infant and toddler products, items such as books, bicycles, clothing, youth-sized motorized off-road vehicles, school supplies, and Scout equipment and accessories are subject to lead and/or phthalates testing. Likewise, all products for children 12 years of age or younger that are made by crafts people, stay-at-home moms or dads, charitable church groups and the like,

must meet the new limits and be tested for compliance or their products are banned. This has completely upset the business model for many of those small businesses and charitable organizations. Because of the retroactive nature of the regulations, many retailers began turning back product with more than 600 ppm well in advance of February 10, 2009, in order to ensure their shelves were free of non-compliant product. As a result, many small manufacturers, who failed to recognize the true scope of the law or were unprepared for the retailers' reaction to the CPSIA, now find they have inventory they cannot sell.

#### Retailers Accelerating Deadlines

Retailers continue to move well ahead of the deadlines established in the CPSIA. For example, it is staff's understanding that Wal-Mart stopped receiving product with more than 300 ppm lead in January 2009. These actions have stranded inventory that may be compliant today but will be banned in August as the lead limit drops to 300 ppm. In addition to the risk that these products may become obsolete and will need to be reworked or destroyed, manufacturers of all sizes are incurring expenses to hold this inventory while they decide how to move their product. The cost to carry this inventory varies by business, but typically runs about 25% of the on-hand inventory value.

As retailers pull product from their shelves, many consumers have also been negatively impacted. For example, CPSC staff have received numerous emails from consumers stating they could no longer purchase parts for their child's youth model motorcycle because of retailer concerns over the lead content of the parts. More than one consumer has noted the possibility of consumers' purchasing vehicles sized for older children or adults if they could no longer service their current motorcycle or ATV. This reaction potentially places these children in a situation of increased risk of injury or death.

#### Solution: Risk-based Assessments That Consider Age and Exposure

It may be too late to mitigate the significant economic impact of the February 10, 2009, ban on children's products containing more than 600 ppm total lead content, by weight, for any part of the product. However, some relief could be provided to deal with the impact on thrift shops and second-hand sales, and Congress still has time to act to prevent the even greater impact that will occur when the lead limit drops to 300 ppm in August 2009. For example, toxic substances limits are better regulated based on the possibility of exposure in relation to age. Foreseeable use data, combined with mouthing and ingestion data at various ages, would define the group at risk for any given product.

This approach would exclude items such as bikes and ballpoint pens from the discussion and we could focus on items like metal jewelry and other objects likely to be mouthed or ingested. By granting the CPSC the flexibility to determine the relevant hazards, flexibility in determining exemptions based on assessment of risks, and the discretion to adjust the age limit for certain groups of products where the exposure is low, resources can be properly focused on areas of greater risk, yielding maximum reductions in consumer risk of death and injury.

***4. Does the CPSC have any suggestions for how to mitigate any such economic impact of the Act on small manufacturers of children's products (e.g., component testing for lead and phthalate content) that, in accordance with the intent of the Act and the CPSC's mission, will not compromise the health and safety of children using them?***

In light of the concerns expressed by small business owners and employees, CPSC staff has been considering what relief might be provided for them without compromising safety. The first challenge was to define what is meant by "small business" in the context of the manufacture of children's products.

For example, with regard to children's apparel, there are not good statistics differentiating those firms that make all apparel versus those firms that make apparel intended only for children 12 years of age or younger. With regard to toys, the analysis of those businesses that are focused on the manufacturing of products solely for children is more reliable. Bureau of the Census (2006) data shows that there are 776 firms that manufacture dolls, toys, and games (NAICS 33993); 403 of those firms (51.9%) have fewer than 5 employees, 632 (81.4%) have fewer than 20 employees, and 963 (98.3%) have fewer than 500 employees which is the standard definition of a small business. Only 13 of the firms (1.7%) that produce toys would not be considered small businesses by the Small Business Administration. All (or almost all) of these firms are likely to produce children's products and all are affected by the current economic downturn.

Another group significantly impacted by the CPSIA is small crafters of products for children, many of whom work out of their homes. Based on a 2000 survey conducted by the Craft Organization Directors Association, there were an estimated 106,000 to 126,000 craftspeople in the United States. Additionally:

- The average gross sales revenue was \$76,000 per craftsperson.
- The median household income of craftspeople was \$50,000 per year, with about half coming from craft activities.
- 64% of craftspeople worked alone, 18% work with a partner or family member, and only 16% had paid employees.

**Component Certification**

The cost of testing and certification is a huge burden on these small businesses and a robust component certification program would be extremely helpful. However, any component testing rule would have to apply across the board to all businesses, small and large, and to our global trading partners in compliance with international trade laws. Furthermore, we have to design a program we are confident will avoid the switch of components during manufacture which is the very problem that Congress was intending to fix by requiring testing of children's products in the CPSIA. Component testing presents real challenges since many of the components used in children's products are not children's products on their own and do not require third party testing. Snaps could be used on a hand knitted sweater that were not produced primarily for use in children's products, and we cannot be sure given the expense of testing, that a market will develop for certified compliant materials for use by crafters.

### Potential Solutions

Recognizing that the Commission always has the ability to take action to address unsafe products in the marketplace, Congress could take many different approaches to mitigate the effects on small businesses. Congress could apply the new lead and phthalates limits prospectively to mitigate the impact on inventory existing prior to enactment. It could allow for a more flexible exception process based on balancing of risks against the burdens of the costs of testing and certification but that could overburden staff. Another option would be to allow the Commission the flexibility to decide what children's products require testing and certification.

***5. What information has CPSC received about the impact of the Act on the availability of second-hand products for children, especially clothing? It is my understanding that many second-hand stores now refuse to sell children's products. Does CPSC have any suggestions for how to mitigate any negative effects of the Act on second-hand stores for children's products, especially in light of the economic downturn and the consequent increased need for low-cost sources of children's clothing?***

CPSC staff has only limited, anecdotal information concerning the impacts of the Act on second-hand stores. Major resellers such as Goodwill Industries and the Salvation Army have estimated impacts, including both lost sales and disposal costs, totaling hundreds of millions of dollars. Many smaller resellers have indicated that under present circumstances, they cannot afford to continue selling children's toys or apparel, which account for much of their revenues. Even church bazaars and neighborhood yard sales are adversely affected.

The major problem for second-hand stores and other resellers is that the CPSIA prohibits the sale, distribution or export after February 10, 2009, of any children's products exceeding the applicable lead or phthalate limits regardless of when they were made. Second-hand stores are typically selling items that were manufactured years earlier. Thus, a large percentage of a reseller's current inventory of children's products may have been manufactured long before the stringent new limits took effect, and it may now be impossible to dispose of such items lawfully except by destruction (which itself may be costly, particularly for non-profit organizations). To make matters more difficult, there is often no cost-effective way to determine which products can lawfully be sold and which cannot.

Unlike other retailers, resellers generally have little or no control over the compliance of the goods that they obtain. Most are donated. Even where they have regular donors, resellers cannot practically establish specifications for children's products as major retailers can for their regular suppliers. Testing everything they receive is not a practical solution either. Like small, home-based manufacturers, resellers cannot spread testing costs across many units of the same type; at any given time, they would usually have on hand no more than a few items of the same type. The standard tests for lead and phthalate content are destructive, so if one tests a single item to determine whether it can be sold, one no longer can sell that item.

Screening devices, such as x-ray fluorescence (XRF) machines, can help in weeding out children's products that have excess lead, without destroying products that comply, but the new technology is still expensive. No such screening device yet exists for identifying phthalates. Even if such technology can be developed quickly, it remains a disproportionate burden to test every unique item in inventory. Some internet resellers and auctioneers do not even have access to the products that are offered for sale by third parties on their website and so could not feasibly test them by any method.

The second-hand store problem will get worse for several years before it may ultimately get better. The lead content limits will drop to 300 parts per million in August 2009 and to 100 ppm in August 2011 (unless the Commission determines that such limit is not technologically feasible for a class of products). Products manufactured after these dates will be in use for some years before they are donated to second-hand stores. So, it will probably take many years before children's products that comply with these stringent limits make up a sizable majority of the products for sale at second-hand stores.

#### Potential Solutions

Under the circumstances, merely postponing the effective date of the lead or phthalate limits for everyone, while this would help alleviate some problems we are seeing, would not be very helpful to resellers because it would allow products with excess lead and phthalates to continue being made, and thus add to the number of noncompliant products that may eventually find their way to resellers and so postpone the day of reckoning.

The most effective way to help resellers is to address the issue of retroactivity, requiring that manufacturers meet the statutory limits for products manufactured after the effective date but that retailers and resellers be allowed to continue sale. If this suggestion were adopted, it would be important to note that resellers could not sell recalled products and that the Commission retains its authority to stop sale of any product if it finds an exposure that presents an unreasonable health and safety risk to children.

A law like the CPSIA that outlaws sales of previously lawful products will, by its nature, hurt retailers more than manufacturers and hurt resellers even more than other retailers (given the fact that products are typically in consumers' hands for several years at least before they reach second-hand stores). While dealing with retroactivity across the board would be the most effective way to deal with the inequities presented by the current law, other suggestions include such things as establishing a separate rule for resellers. For example, the ban on selling children's products with excess lead or phthalate content could take effect at a later date for second-hand sellers than for retailers generally. Or, resellers (or some subset of them, such as individual consumers or non-profit resellers) could even be exempted entirely from the provision that makes it a prohibited act to sell products containing more than trace amounts of lead or phthalates. Children's products that would have been banned under prior law should not be exempted in any case, and there may be categories of products, for example, children's metal jewelry, that should be handled more strictly. While consumers are accustomed to the notion that used goods are sold "as is," it might be appropriate to require a label or other type of

warning at the point of sale if resellers are allowed to continue to sell older children's products that do not comply with the new limits.

Lest there be any question, CPSC staff does not favor exempting second-hand sellers from the prohibition against selling recalled products (including children's products that are recalled for excess lead paint, or excess lead or phthalate content). The staff believes that resellers can reasonably be expected to keep abreast of CPSC recalls by signing up to receive CPSC's recall press releases and to remove any recalled products from their shelves. Similarly, where Congress has unambiguously directed application of new regulatory requirements to a discrete class of used children's products, such as cribs, CPSC staff believes that resellers no less than others must take steps to comply, even if that means deciding not to sell the products in question.

The Commission has adopted an enforcement policy on lead limits and has issued other guidance to second-hand stores to address many of the recurring issues. In the staff's view, however, the core problem is caused by the retroactive nature of the law and is beyond the agency's authority to solve.

***6. Does CPSC believe that the age limit contained in the Act's definition of "children's products" (i.e., 12 years and under) is appropriate? If not, what should the age limit be? Further, should CPSC have discretion to lower the age limit for certain groups of children's products for which the risk of harm from lead or phthalate exposure is remote (e.g., snaps or zippers on children's clothing)?***

The term "children's product" has significance for several different provisions of the CPSIA. It specifies which products are subject to the lead content limits. Indirectly, it plays a role in defining which products are subject to the phthalate limits. It governs the scope of products that require certification based on third-party testing and those that will require tracking labels "to the extent practicable."

CPSC staff believes that for purposes of defining which products are subject to lead limits, the boundary age could reasonably be lower than 12, at least in most cases. The Senate bill (S. 2045) deemed age 7 a satisfactory upper limit. CPSC staff understands that the conferees ended up agreeing to age 12 primarily because of the so-called "common toy box problem" – i.e., the concern that a product intended primarily for older children might nonetheless be available to younger ones in the same home. This choice had the effect, however, of applying the lead limits to a much larger population of products, including many that are not toys and even including outdoor products such as dirt bikes or ATVs that would rarely be accessible to younger children under any circumstances.

#### CPSC's Regulations Established Age Limits by Product Class

CPSC's own regulations have used a variety of different ages to define what group of children's products will be subject to a standard or ban, and these precedents may be useful to consider. For example, the small parts ban applies to products that are intended for children under 3. Toys that are intended for ages 3 through 5 are allowed to have small parts, provided that they have

cautionary labels to warn that they are not suitable for youngsters under 3. In general, toys that are intended for children 6 and older do not require cautionary labeling except in a few specific cases such as balloons and small balls. The lead paint ban (16 CFR part 1303) applies to children's products without a specific age definition. Despite this broad applicability, the scope of the lead paint ban has rarely if ever, generated controversy. This is probably so because it is limited to children's products that have paint or similar surface coatings, and such products are much fewer in number and more easily identified than children's products generally.

Both the likelihood of exposure and the route of exposure are factors to consider in deciding what products should be subject to lead limits. Lead presents an acute hazard when direct ingestion is possible. For this reason, CPSC staff has long treated children's metal jewelry as warranting special concern. In other applications, brass and many other metals often have some lead content, particularly to improve workability, corrosion resistance and other properties. Where such objects can be mouthed but not swallowed, they generally pose a lesser risk, and objects that can be licked but not mouthed pose still less risk. There are some products where mouthing or licking is unlikely but where some lead exposure may result from touching and inadvertent transfer of lead from hand to mouth. A child's exposure to lead from zippers and snaps will depend on the type of garment and the child's age, among many other factors.

Practical Solution: Commission Discretion

One way to address these issues would be to give the Commission more discretion to grant exclusions from the lead or phthalate limits. Under the law as currently written, a material having more than 600 parts per million lead cannot be excluded unless touching the product will not result in the absorption of *any* lead. Taken as a whole, the language of section 101 appears to rule out treating even very low levels of absorbable lead as negligible. Congress could modify this exclusion criterion to allow *de minimis* levels of absorption or to change the focus to preventing any significant increase in blood-lead levels of a child, particularly for children who are of the age of the intended user.

Giving the CPSC discretion to lower the age limit for certain classes of products might be more efficient than dealing with many requests for exclusion, which is a resource-intensive process. Another resource conserving approach would be for Congress to lower the age limit across the board and give the CPSC discretion to set a higher age for certain materials or classes of products that pose a risk to older children or to younger ones in the same household.

***7. Although some youth all-terrain vehicles (ATVs) and youth motorcycles are intended for use by children under 12 years of age, does CPSC believe it is necessary that these products be tested for lead and phthalate content? Similarly, does CPSC believe that these products present a risk to children for the absorption of phthalates or lead?***

CPSC staff is aware that many different parts of youth ATVs and youth motorcycles have lead content, some of which may exceed the 600 or 300 ppm level. Some of these parts are inaccessible, and some parts may qualify for the higher limits applicable to certain electronic components. Other parts, however, appear to be accessible and may not qualify for any

exclusion under section 101 of the CPSIA. These youth vehicles may also have some phthalate content, but they do not appear to be covered by the section 108 bans, which are limited to certain toys and child care articles.

The possibility that children will suffer significant lead exposures from these classes of vehicles appears to be remote at best. First, the vehicles are generally stored outside the home, where younger children would rarely be allowed unsupervised access. The vehicles are generally designed for children of at least 6 years of age and older. These children are far less likely to ingest or mouth components of a motorized vehicle – even those that are physically exposed – than something that fits readily in the mouth, such as a jewelry chain or charm. Children may still be exposed to some lead as a result of touching seats, handle bar grips or other places and then inadvertently transferring some of the lead to their mouths from their hands, either directly or indirectly, as for example while eating. For most children, however, this type of exposure is not likely to result in significant absorption of lead. This is particularly true where children are wearing appropriate protective riding gear, such as gloves and helmets.

#### Broadening the Exemptions for Metals

In section 101(b)(4), Congress recognized that it might not be technologically feasible for certain electronic devices to meet the lead limits applicable to children's products generally and gave the CPSC authority to adopt other requirements for such devices. The Commission has exercised this authority on an interim basis and established higher limits for certain electronic components where it concluded that such parts cannot be made inaccessible and it is not technologically feasible to substitute other materials at this time. These include metals such as steel, aluminum and copper alloys as used in electronic devices. In adopting these alternative limits, the Commission made reference to exemptions recognized elsewhere, such as the European Union directive 2002/95/EC known as RoHS. It is worth noting that in Europe, the RoHS exemptions are equally applicable to non-electronic uses of these metals, but the staff believes that section 101 gives us no flexibility to apply the same exemptions outside the realm of electronics. This means that children's products containing these metals and metal alloys manufactured for the U.S. market cannot employ recycled metal to the same extent as they can in Europe; rather, the manufacturers for the U.S. market must obtain supplies of primary metal, forcing vastly higher energy consumption and higher costs, or they must quickly switch to substitutes whose properties are poorly understood and may even pose more significant safety risks to children.

Under the current law, CPSC staff believes that an exclusion for youth ATVs would be very difficult to justify. Some have argued that if youth-sized ATVs cannot be sold for an extended period of time, owing to lead limits, then more children may end up riding adult-sized ATVs. A child using an adult ATV as a substitute would face a far graver and more immediate risk than that of the possible lead exposure from the youth ATVs.

#### Potential Solutions

The ATV situation is illustrative of a number of product classes that may not qualify for an exclusion. Congress could moderate this situation in several different ways. These include one or more of the following (not in priority order): (1) postponing the deadline for sales (not

manufacture) of children's products containing lead above the new limits; (2) lowering the age limit for children's products (as discussed in the response to question 6); (3) exempting some or all children's products that are usually not kept in the house, such as bicycles and ATVs; (4) giving the CPSC greater discretion to exclude from compliance with the lead limits any materials or products that pose a negligible risk to children (as discussed in the response to question 6); or (5) allowing materials that are eligible for special treatment when used in electronic devices to receive similar treatment in other children's products when the justification is equally compelling.

**8. In light of recent court decisions that the lead and phthalate content restrictions are retroactively applicable, does CPSC have concerns about the effect on the environment of the disposal of inventories of non-compliant children's products?**

This issue lies within the authority and expertise of the Environmental Protection Agency (EPA).

**9. I understand that, since early December 2008, CPSC has had access to a large number of lead content results for finished "ordinary books" (i.e., books published in cardboard or paper by conventional methods and intended to be read by or to children age 12 and under) and their component materials (i.e., paper, paperboard, ink, adhesives, laminates, and bindings). Has CPSC staff reviewed those test results? What do those test results indicate about such ordinary books and component materials in connection with the statutory lead limits prescribed in section 101(a) of the Act? Does CPSC have any recommendations regarding how to mitigate the burdens that testing and certification requirements of the Act, and especially the retroactive applicability of those requirements to inventory, could otherwise impose on publishers, printers, and retail sellers of such ordinary books, as well as on libraries, schools, charities and other secondhand distributors of such ordinary books, including those published before 1985?**

Lead Testing and Printing Ink: The Publishing Industry's Challenge

Given the breadth of the definition of children's product in the CPSIA, the Commission received thousands of questions over the past six months regarding the scope of applicability of the retroactive lead limits and the required third-party testing of such products. At the same time, retailers began demanding certificates of compliance for products likely to be on their store shelves on February 10, 2009. The publishing industry claimed to have been unaware that the definition of children's product would encompass books until retailers started asking for certificates of compliance and we posted a response to one of the frequently asked questions regarding the application of the CPSIA to books intended or designed primarily for children. Because of the variety of colors of inks used in making children's books printed on paper and cardboard, the requirement of testing for compliance to the new lead limits proved costly and onerous. Some retailers were demanding separate certificates of compliance for each book title.

The issue of lead in printing ink and other products used to make a book is not new. Indeed, in 2007 the publishing industry issued a statement on lead in books to respond to any concerns

raised about books related to that year's toy recalls for excessive lead in paint. (See American Booksellers Association statement of November 29, 2007, *Bookselling this Week: Getting the Lead Out: Consumers Question Books Made in China*, found on March 15, 2009 at <http://news.bookweb.org/news/5695.html>.) The Commission has occasionally recalled such products for excess lead; for example, a recall was conducted in February 2008 for excess lead in paint on the colored spiral metal bindings of several sketchbooks. In July of 2004, the Commission issued a warning regarding the hazards of lead in candy wrappers that contain lead or bearing lead-containing ink.

#### The "Ordinary Book" Exemption

The Commission staff wanted to provide some relief to the book publishing industry given the extraordinary impact of third-party testing for lead and because the publishing industry maintained that the Commission had never considered ordinary children's books to be a health hazard. However, given the requirements of the CPSIA, the staff felt that they needed some representative data upon which to base a decision to exempt children's books from the requirements. The number of requests for relief from the retroactive effect of the CPSIA was so high that the staff felt that in fairness, any determination that the law did not apply to a material or class of products should be based on science and supported by test results.

It is not the case (noted in your question) that the Commission staff has had access to a "large number of tests on finished 'ordinary books'," but rather we have had access to a very limited data set on which the publishers have based their request for an industry-wide exemption from testing to the new lead content limits. The publishing industry association provided the staff with 152 separate entries representing testing done on approximately 157 books conducted anywhere from 2004 to 2009. The books tested range from the ordinary books to books with handles, stickers, kits or other accessories. The staff reviewed those test results, and initially concluded that many of the tests were done for European standards and/or did not test for total lead content as required by Section 101 of the CPSIA. The staff of the CPSC asked the industry to provide more data for total lead content and demonstrate that the data submitted was representative of all of the millions of ordinary books sold to children 12 years of age or younger.

The additional data submitted suggests that modern book publishing using offset lithography does not result in books with lead levels in excess of the 300 ppm limit that goes into effect in August of 2009. However, the Commission staff has not had the time or resources to look at the issue completely or comprehensively and has been hopeful that more data would be submitted by industry particularly with respect to books published in the 1960s and 70s. The Commission staff has been assured that the publishers now all use inks that result in children's books that fall below the statutory limits for lead. While the staff does not have a statistically valid basis for a wholesale exclusion of children's books at this time, its determination to exclude them from testing and certification does not mean that any children's book can exceed the lead limit. All children's books must meet the lead limit.

Making a determination that ordinary books cannot and will not exceed the lead limits appeared to be the only means of providing immediate relief. Such an exemption from testing also should

provide relief from the retroactive application of the standard to all books in schools and libraries that are provided to children for their use. In the meantime, the publishing industry was given a conditional enforcement waiver on the testing and certification requirements for lead, pending staff's review of the data and any additional data that may be submitted. That exemption was limited to books manufactured after 1985 because the publishing industry has not provided any test data on books published in the 60s and 70s. Instead, the industry has pointed to the fact that lead was removed from printing operations in this country due to federal statutory restrictions on worker exposure to lead in printing operations which went into effect in the late 70s. The very limited testing the Commission staff has done indicates that the lead content of these older books can occasionally exceed the 300 ppm limit that goes into effect in August 2009 but that data may not be representative. At this time the Commission staff has not had the time or resources to prove that books made more than twenty years ago do not exceed the lead limits as staff has needed to focus its resources on its investigations of deaths and injuries to children and other emerging risks and health hazards.

#### Library Books and Used Book Resellers

The retroactivity of the lead provision is particularly problematic in the area of books and other printed materials. We have done very limited testing of books from the 60s and 70s. It suggests that the lead content hovers around the 300 ppm mark. Anecdotal evidence received by the agency suggests that on occasion books from this earlier period may contain lead in excess of the lead limits in their binding materials. The only way to determine the total lead content in these books is to test them.

Under the CPSIA, however, sellers of used children's books, including used book stores and thrift shops, are not required to test or certify that children's books meet the new lead or phthalates limits. The CPSIA does not require resellers to test children's products in inventory for compliance with the lead limit before they are sold. However, resellers cannot sell children's books intended primarily for use by children that exceed the lead limit.

The Commission had hoped that an exemption for "ordinary books" plus its announced enforcement policy for lead would alleviate this situation. Based on information received from the trade associations with information regarding books in libraries and schools, the Commission staff understands that most textbooks in schools are less than ten years old. Likewise, the information received suggests that most library books lent to children are recycled approximately every 18 lending cycles or three years. Thus, it appears that few of the books being provided to children in their schools and from libraries would be more than 20 years old.

#### Potential Solutions

Staff has considered children's behaviors with books and concluded that after about 19 months of age, children may occasionally put part of a book in their mouths, but they typically are taught to care for their books so that they can continue to be used for reading and learning. This information suggests that any exposure to lead from contact with books diminishes as children age. We believe an exemption is the only way to provide relief under the CPSIA. Congress could limit the testing of books to only those picture books provided to children much younger

than 12 since this is the population of children that would be most likely to interact with their books in a way that could expose them to inks with higher lead content. Lowering the age limit would be extremely helpful to staff in dealing with books and many other products by narrowing the scope of products covered. Lowering the age limit would also provide relief to schools who face retroactive application of the lead provisions not just with regard to books but also the wide variety of other educational materials they provide to school-aged children.

The CPSIA establishes that any children's product no matter when it was made is a banned hazardous product if it exceeds the lead limits and the law does not have an exemption procedure other than one based on scientific proof that there will not be absorption of any lead. One solution would be for Congress to create a waiver process allowing the Commission to "grandfather" in products made prior to the date of enactment if the Commission concludes those products present only a *de minimis* exposure level and, therefore, a negligible risk. This could be used to solve the problem of used books as well as other products commonly sold second-hand such as used clothing or youth bicycles. It creates an administrative burden that the Commission may not be able to handle without some delay, but it would provide relief without having to undo the retroactive effect of the law altogether.

***10. In general, does CPSC believe that the Act was written with too little implementation discretion for the Commission? If this is the case, for which issues (e.g., third party testing requirements) does CPSC require more discretion?***

The CPSIA provides too little implementation discretion for the agency. One of the major problems with implementation has been the statute's reach across a variety of industry sectors quickly and simultaneously by virtue of its broad definition of "children's product." The lead limits reach literally every product intended or designed for a child 12 or younger. The breadth of the statute's reach has made it difficult for the Commission to address industry specific concerns in the few areas where the agency has discretion. The Commission needs room to address toy industry concerns separately from those of the apparel industry, from those of the publishing industry, and separately again from those of industries that make outdoor products for children such as motorized recreational products, playground equipment and bikes.

The lead limits and testing and certification provisions could be implemented much more smoothly if the Commission had the discretion to roll out those requirements on a product class basis. The same will soon be true for tracking labels where each industry has specific concerns about how additional labeling requirements will work given existing and multiple other labeling requirements. Congress can direct the agency as to how to determine priorities and work to a specific schedule as evidenced by section 104 which gave some flexibility to the Commission in pursuing the congressional mandates for new durable infant product standards. A similar approach to implementing all of the Act's new rules and requirements would ease the implementation burden. Indeed, the stay of enforcement of certification and testing was the agency's only means to get the breathing room it needed to deal with the various unanticipated issues that arose given the breadth of the industries affected.

Some have argued that the Commission should have a more relaxed approach to exclusions from the lead limits. However, the lead provision of the CPSIA restricts the agency's discretion at a variety of points in the statute. It allows for exemptions in three limited circumstances described in section 101(b). That section allows exclusions for inaccessible component parts of children's products and also allows the Commission to exempt electronic devices where lead is necessary for their functionality and cannot be made inaccessible. Beyond those exclusions, however, the statute leaves very little flexibility. Section 101(b)(1) of the CPSIA provides that the Commission may, by regulation, exclude a specific product or material that exceeds the lead limits established for children's products under § 101(a) of the CPSIA if the Commission, after notice and a hearing, determines on the basis of the best-available, objective, peer-reviewed, scientific evidence that lead in such product or material will "neither result in the absorption of any lead into the human body," given reasonably foreseeable use and abuse of such product, including swallowing, mouthing, breaking or other children's activities or the aging of the product, "nor have any other adverse impact on public health or safety." (Emphasis added.)

The clear language of the statute is rigid; an assessment of whether there is absorption of "any lead" cannot be based on a risk based assessment because that language does not appear to allow any amount of lead, no matter how insignificant, to be absorbed in the human body. While the courts have occasionally upheld agencies applying a *de minimis* standard and exempting trivial risks from regulation, that has been permitted only when Congress has not unambiguously denied agencies that authority.<sup>1</sup> Here the act specifically limits the exclusion to an application supported by peer reviewed science supporting a demonstration that there cannot be absorption of any lead. Moreover, section 101(e) appears to restrict the agency's ability to use enforcement discretion while exclusion requests are pending, by stating that a pendency of a rulemaking to consider a request for exclusion "shall not delay the effect of any provision or limit . . . nor shall it stay general enforcement" of the lead limits.

Those who argue that common sense exclusions are permitted by the CPSIA would have to ignore sections 101(b)(1) and 101(e). Yet as the unanticipated consequences of the retroactive effect of the law have demonstrated, some ability to provide for *de minimis* exclusions would be helpful in implementing of the Act. The effort to deal with the *de minimis* risks given the speculative yet conceivable routes of exposure presented by certain products such as bike tire valve stems distracts attention from more serious health and safety problems that the agency must address. Recently proposed legislation banning BPA recognizes the need for such flexibility to provide relief when a manufacturer cannot comply because it is not technologically feasible to do so in the timeframes permitted. Yet such a waiver or exemption process could prove to be too resource intensive and divert agency resources to handling thousands of exemption requests when staff should instead be dealing with other risks that deserve attention such as identifying emerging hazards.

<sup>1</sup> Compare *Les v. Reilly*, 968 F. 2d 985 (9<sup>th</sup> Cir.1992) and *Public Citizen v. Young*, 831 F.2d 1108 (D.C. Cir. 1987) with *Ohio v. EPA*, 992 F.2d 1520, 1534-35 (D.C. Cir. 1993). See also Hahn and Sunstein, *A New Executive Order for Improving Federal Regulation? Deeper and Wider Cost-Benefit Analysis*, U Chicago Law & Economics, Olin Working Paper No. 150. This paper can be downloaded without charge at: <http://www.law.chicago.edu/lawecon/index.html>.

The CPSIA forsakes the core strengths of the CPSC's original statutory framework which has from the beginning allowed the Commission to prioritize its regulation of consumer products by an overall assessment of all the risks at stake, the magnitude of those risks and the actual consequences of the hazard. Congress should permit the agency to exempt certain products from the limits established by the CPSIA, to ease the burdens of testing and certification on products unlikely to present more than a negligible health risk, and to regulate on a timetable influenced by the seriousness of the actual risks not artificial deadlines. A more flexible exception process would avoid regulation of *de minimis* problems both prospectively and retroactively.

Moreover, this would allow the CPSC to consider the impacts of the regulatory requirements of the CPSIA, like the balance between the adverse effects on second-hand sales of children's clothing or bicycles and the potential risks from exposure in such products, which is especially important during the current economic crisis. It should also allow the Commission to balance risks such as balancing the risk of possible lead exposure to a child riding a youth-sized ATV against the risk to the child from riding a larger and more powerful adult ATV. Given that exceptions would be made on a notice and comment basis, the underlying analysis and support for any exceptions will be public allowing for transparency and accountability. Finally, relaxing certain deadlines in the Act will allow for better priority setting which will allow Commission resources to be put towards the most serious health risks first.

\* \* \*

#### CONCLUSION

The staff has set forth in its answers to specific questions above numerous approaches to dealing with the issues raised. In our view, we have been confronted with three major issues in implementing the CPSIA: (1) the retroactive application of requirements to inventory; (2) the broad reach of the legislative mandates given that "children's product" is defined as a product for children 12 years of age or younger; and (3) the impact of the new testing and certification requirements for all consumer products and the third-party testing requirements for children's products. You have asked us to consider possible solutions to the problems raised in the letter, and make our best recommendation as to productive solutions recognizing that these are ultimately policy decisions for others to make. We concluded that the following three changes would resolve many of the major difficulties identified above:

- Limit the applicability of new requirements to products manufactured after the effective date, except in circumstances where the Commission decides that exposure to a product presents a health and safety risk to children.
- Lower the age limit used in the definition of children's products to better reflect exposure and give the CPSC discretion to set a higher age for certain materials or classes of products that pose a risk to older children or to younger ones in the same household.

- Allow the CPSC to address certification, tracking labels and other issues on a product class or other logical basis, using risk-assessment methodologies to establish need, priorities and a phase-in schedule.

As discussed above, there are many ways to address the challenges of implementation and meet the important goals of the statute. Regardless of the path chosen, some legislative changes would be helpful to allow the agency to set risk-based priorities given the finite resources available to the Commission.



UNITED STATES  
CONSUMER PRODUCT SAFETY COMMISSION  
4330 EAST WEST HIGHWAY  
BETHESDA, MD 20814

March 20, 2009

The Honorable John D. Dingell  
Chairman Emeritus  
House Energy and Commerce Committee  
Room 2328  
Rayburn House Office Building  
Washington, D.C. 20515-2215

Dear Chairman Dingell:

Thank you for your letter of March 4, 2009, regarding the Commission's implementation of the Consumer Product Safety Improvement Act of 2008 (CPSIA).

Nearly two years ago I stated that the CPSC was at a crossroads. We would either get more funding and more staff or we would continue a decline that would eventually result in the agency ceasing to be an effective force in consumer safety. At that same time, wave after wave of press stories about hazardous products that the agency had purportedly not acted on in a timely manner were appearing and recall after recall involving lead were being announced. In response, Congress, and the citizens it represents, decided that not only should the agency survive but it should regain its lost stature. Through the CPSIA we were given new enforcement tools, manufacturers were required to prove that their products met national safety standards and the agency was given the resources (after a decade of seeking them) to build an IT system that will pull all of our disparate pieces of hazard data into one comprehensive, searchable database that will enable the agency to spot emerging hazards in a much timelier fashion.

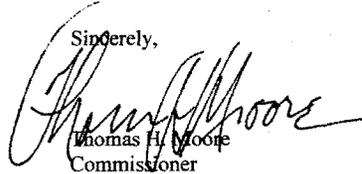
The CPSIA presents both opportunities and challenges for our staff. Despite the fact that the agency did not get the immediate increase in funding that the Act envisioned, our staff has done a remarkable job of meeting the Act's deadlines (in some cases many months before the Act required them to be met). Staff has done this with an agency that only has two Commissioners who do not view the Act in the same light and who do not always agree on the Act's meaning. This has left the staff unsure in some instances about how to proceed and caused delays in providing guidance and in prioritizing the agency's work. That is also why there is no *Commission* response to your questions. The single most important step that needs to be taken in furtherance of the implementation of the CPSIA at the agency is to have the third Commissioner, who would also be the Chairman, appointed to lead the agency. Then the Commission would be able to give the staff direction and attend to various concerns that have gone unaddressed. This would also eliminate the threat of yet another loss of quorum, which has happened twice since July of 2006, and which would severely hamper the continued implementation of the CPSIA.

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Congress has entrusted this agency with a large and important mission. The passage of the CPSIA was a huge vote of confidence for the agency and despite the hue and cry of some in the business community who will never be happy with the closer scrutiny and accountability required by the Act, it is a major accomplishment of the last Congress, and one that your leadership was instrumental in achieving.

I do agree with staff that additional time to implement certain of the Act's provisions (such as the one that made nearly all of the voluntary requirements in ASTM's F963 mandatory) would have been preferable. However, I think that when the agency gets the third Commissioner, we will be better able to address some of the concerns voiced by staff and by industry. Until then any legislative "fixes" are premature. Only the *Commission* should recommend what, if any, changes should be made to the CPSIA and no assumptions should be made that there are no other solutions than legislative ones until all three Commissioners have a voice in the matter.

Sincerely,

A handwritten signature in cursive script, appearing to read "Thomas H. Moore".

Thomas H. Moore  
Commissioner

cc: Acting Chairman Nancy Nord



UNITED STATES  
CONSUMER PRODUCT SAFETY COMMISSION  
4330 EAST WEST HIGHWAY  
BETHESDA, MD 20814

CHAIRMAN INEZ M. TENENBAUM

October 16, 2009

The Honorable Henry A. Waxman  
Chairman  
House Committee on Energy and Commerce  
2125 Rayburn House Office Building  
Washington, DC 20515

Dear Chairman Waxman:

Attached please find responses to the written questions for the record submitted by certain Members of the Committee in connection with the September 10, 2009, hearing entitled "CPSC Oversight: Current Issues and a Vision for the Future." An electronic version of these responses will also be provided to Early Green, Chief Clerk of the Committee.

Thank you again for the opportunity to testify before the Committee. Should you have any questions or require additional information, please do not hesitate to contact me or Christopher Day, Director of Congressional Relations, at (301) 504-7660 or by e-mail at [cday@cpsc.gov](mailto:cday@cpsc.gov).

Very truly yours,

A handwritten signature in cursive script, appearing to read "Inez M. Tenenbaum".

Inez M. Tenenbaum

Attachments

**The Honorable Joseph R. Pitts**

Chairman Tenenbaum, in your testimony to the Subcommittee, you made reference to the need for import monitoring by stating:

“Pursuant to Section 225 of the CPSIA, the GAO recently released a study that audited and analyzed the agency’s efforts to police imports, and prevent the entry of unsafe products into the U.S. market. In the report, the GAO found that increased agency staffing at ports, combined with revised information sharing agreements with U.S. Customs and Border Protection (CBP) would allow the agency to better detect faulty products before they enter the country – not after they enter the stream of commerce.

“I agree with these recommendations, and have directed Commission staff to update agreements with CBP to allow better information sharing. This information sharing would include use of CBP’s Automated Targeting System (ATS), which contains advance manifest information for shipments entering the United States.”

Directly tied to the need for import monitoring is the development of a mandatory standard for cigarette lighters, which would give the Commission additional authority to exclude unsafe lighters from the U.S. steam of commerce.

1. The Committee would like to ensure that the CPSC complete a rulemaking mandating general safety standards for lighters that it initiated on April 11, 2005. In fact, the Senate approved an amendment (as Section 33) during consideration of the CPSIA that would have required the CPSC to complete its rulemaking within 24 months. The House did not include this language, but the Conference Committee included committee report language urging the CPSC to complete the rulemaking. Can you please explain the status of this proceeding and the timetable for its completion?

Answer: The April 11, 2005, rulemaking mandating general safety standards for lighters remains an agency priority and is listed on the Commission’s current regulatory agenda.

2. There has also been some concerned about the Staff not adhering strictly to the procedure of the regulation to determine if new cigarette lighter products comply with the requirements of the CPSC child resistant standard. Can you please explain the Commission’s process of review of these products?

Answer: In the just-ended FY 2009, CPSC staff received 230 lighter submission reports addressing 576 separate lighter models. CPSC staff has completed its review on 554 models; 22 recent submissions are still pending. We are not aware of any irregularities or other factors that would give rise to the expressed concerns about not strictly adhering to the procedures of the regulation. Most of the submissions we

receive involve requests to cross-qualify one lighter based on the child-resistance testing of a model previously approved by CPSC.

In these cases, CPSC staff compares the later model and its characteristics with those of the previously approved model. Another type of submission involves a request that a company be added to the list of authorized importers for a previous approved lighter model. In these instances, CPSC staff works to verify that the lighter has in fact been previously approved for import. The last and smallest category of applications involves newly tested models. The staff spends more time on these than on any other category of application.

With regard to newly submitted models, the submission report is first sent to the Health Sciences to determine whether the testing performed on the new model was consistent with the protocol specified in our regulations. A copy of the report also goes to the Human Factors Division of the Office of Engineering Sciences to review the characteristics of the lighter and determine whether a child could operate the lighter having the specifications shown in the application. In some cases, physical testing of the lighter may be done at CPSC's laboratory to verify that the specimen is operating within specifications. As soon as a determination has been made, the applicant is notified. If the lighter is approved, it is added to a list that enables that lighter to be imported by specific entities.

**3. Finally, are CPSC resources devoted to the implementation of CPSIA preventing staff from completing the rulemaking?**

Answer: The implementation timeline required by the CPSIA, the delay in receipt of additional funding earlier this year, and the emergence of several new hazards requiring immediate Commission attention, such as imported drywall, required a significant reallocation of resources and reprioritization of planned agency work. This has resulted in a delay in completing this particular rulemaking.

The Honorable George Radanovich

## CONFLICTING STANDARDS

1. **The Consumer Product Safety Commission's (CPSC) organic statute establishes the purpose of the Commission as to protect against "unreasonable risks of injury" associated with consumer products, not from "any risk of injury." The Consumer Product Safety Improvement Act (CPSIA) takes something like this latter approach and attempts to remove any *theoretical* risk of injury by establishing specific bright line requirements for all children's products. Should the CPSIA standard of risk conform to the underlying statute or does the underlying statute need to be amended to reflect the zero tolerance standard of CPSIA? Additionally, could this new standard affect the Commission's ability to conduct its "unreasonable risk of injury" mission over non-children's products not covered by CPSIA?**

Answer: The findings and purposes section of the Consumer Product Safety Act (codified at 15 U.S.C. 2051) provides that the Commission's overall, general mission is to "protect the public against unreasonable risks of injury associated with consumer products." In the CPSIA, however, Congress decided that certain areas, such as lead and phthalates in children's products, required bright-line standards.

These provisions are not contradictory; rather they express Congressional intent to apply a stricter standard to certain classes of materials and products intended for children. Both the CPSA and the FHSA remain the primary vehicles for addressing non children's products not covered by the CPSIA and allow the Commission to consider unreasonable risks of injury.

2. **A few weeks ago, the CPSC released its "Back to School Safety Checklist," which included a reminder for parents to make sure all children wear their safety helmets whenever they ride their bikes. Commission staff estimates an average of 80 deaths of children 16 and under each year related to bicycle accidents. Is it consistent to continue to permit bicycles to be distributed in commerce when we know their use will result in scores of deaths each year, yet ban the use of any bicycles with tire valves containing trace amounts as hazardous products?**

Answer: On June 30, 2009, the Commission published a two-year stay of enforcement of the CPSIA Section 101 lead level requirements with regard to certain bicycle parts. (74 FR 31254) During the pendency of this stay, the sale or use of bicycles with tire valves containing trace amounts of lead is not banned. Furthermore, the Commission has committed to work with bicycle manufacturers during the stay to come into compliance with the Section 101 requirements, or identify those areas where compliance is technologically infeasible.

During the course of the stay, the Commission believes it is still prudent to warn children of other risks – such as failing to wear a safety helmet – in order to reduce injuries and deaths to the lowest level possible.

#### **COSTS ASSOCIATED WITH CPSIA**

- 3. Testing products for lead and phthalates requires destroying a product sample. In some cases, the independent tester requires multiple samples. How do we effectively address the unique circumstances to preserve cultural benefits of products - such as the Native American clothing - that are one- of a kind and can't be tested unless the product is destroyed?**

Answer: A children's product that is produced as "one-of-a-kind" obviously cannot be subjected to destructive testing. However, the CPSIA requires the manufacturer to certify the product as compliant to all applicable children's product safety standards based on the results of third party testing. Third party testing of components parts may satisfy the testing requirements of the CPSIA without subjecting the final product to destructive testing. Staff is in the process of developing a rule on testing requirements that will address the issue of "one-of-a-kind" products.

- a. In addition, how should similarly situated business that produce few items per batch be addressed when the costs of testing a product are greater than the value that can be recouped by the manufacturer or home based business selling the rest of the batch?**

Answer: The CPSIA requires manufacturers of children's products subject to a children's product safety rule to certify their product complies with all applicable safety rules. This certification must be based on third party testing. Staff is in the process of developing testing requirements for Commission consideration that will attempt to address the need to balance testing costs with the Congressional mandate to ensure compliance to applicable safety standards.

- 4. There have been numerous reports from industry surveys about the lost inventory and testing costs that have forced businesses to simply fold up their shops. In total, these costs are in the billions. Is the Commission tracking the economic impact and costs of the CPSIA? If not, does the Commission plan to produce an estimate in the future?**

Answer: The Commission does not customarily track the economic impact and costs of federal legislation, and is not tracking this data regarding the CPSIA. In the past, Congress has relied on the Congressional Budget Office (CBO) and the Government Accountability Office (GAO) to conduct analyses detailing the economic impact of federal legislation. At this time, the Commission does not plan to produce an estimate due to the resources that would have to be diverted from CPSIA implementation and other deadlines.

5. **Should the Commission survey the independent testing labs to see what percentage of products tested for CPSIA compliance failed these tests? If not, please explain why.**

Answer: The Commission is not currently surveying independent testing labs for this data. However, there may be some value in using the results of the suggested survey as an indicator of industry's progress, or lack thereof, towards ensuring their manufacturing processes are capable of producing compliant products.

#### **STAYS OF ENFORCEMENT**

6. **Are companies regulated by CPSIA still subject to State Attorneys General (AG) enforcement and penalties regardless of any stays of enforcement issued by the CPSC?**

Answer: Companies regulated by the CPSIA remain subject to state attorney general injunctive actions during the stays of enforcement issued by the Commission. To date, no state attorney general has filed an injunctive action to enforce the CPSIA and several have indicated that they do not plan to do so until implementation issues have been addressed by the Commission. Commission staff recently met with and will continue to meet regularly with several assistant and deputy state attorneys general with responsibility for consumer health and safety to foster constructive dialogue in an attempt to reach a common approach on these issues.

7. **Would you consider the enforcement stays issued by the Commission relief if companies are subject to State AG enforcement and potential civil liabilities?**

Answer: The CPSIA reflects Congress's intent to allow state attorneys general to pursue an injunction. Although legally the state attorneys general can bring an injunction action, to date they have not done so.

8. **What happens when the stay on ATV's expires in 2011? Is the Commission ready to implement and enforce the law as written? Will the Commission have the necessary resources to implement and enforce the law as written?**

Answer: During the pendency of the two-year stay of enforcement of the Section 101 lead limits for certain ATV component parts, the Commission will continue to work with manufacturers to identify feasible means to comply with the Section 101 limits. It is premature to predict what might happen when the stay expires in 2011.

The Commission has the resources absolutely necessary to implement and enforce the law. However, we would welcome any additional resources and appropriations Congress can provide not only to implement provisions of CPSIA, but also to help the Commission increase staffing and improve its information technology modernization efforts, both of which will enhance the Commission's ability to identify and address new and emerging product hazards.

9. **Do you believe industry will be able to comply with both the decreased lead limit as well as the testing and certification requirements, or will additional relief be necessary? If so, will the Commission consider issuing another stay of enforcement?**

Answer: The one year stay of enforcement on testing and certification was intended to give industry a year to prepare for the testing and certification requirements. The Commission will fully review this issue again in February of 2010 but I cannot speak for the Commission on how individual Commissioners might vote on this issue.

10. **Do you believe the Commission has the legal authority to issue further stays of enforcement? If not, what actions could the Commission take if it determined an additional stay is necessary?**

Answer: The stays of enforcement issued to date have been based on a policy determination by the Commission that the safety of the product given the functional purpose of the part containing lead in excess of the limit supported a decision to provide the manufacturer with additional time to determine whether and when substitute parts made in accordance with the lead limits would be available. The stays are limited as to the parts covered and the duration of the stay and require interim reporting on the efforts made by the various companies to bring their products into compliance. Furthermore, the stays are tantamount to a refusal to initiate enforcement proceedings, which is ordinarily committed to the agency's discretion. The Commission could issue additional stays if warranted. The clear intent of the law is to remove lead from children's products so any additional enforcement stays should be limited to the narrow circumstances where the strict, immediate compliance with the lead limit could jeopardize the health and safety of children.

#### **PHthalATES**

11. **The CPSIA contained an exemption for lead parts that are inaccessible to children through reasonable and foreseeable use and abuse. In perhaps an example of unforeseeable issues, Congress overlooked that some products may contain inaccessible parts made of phthalates, versus other products such as rubber bathtub toys that typically contain phthalates. How will CPSC address concerns expressed by toy manufacturers about the requirement to test "inaccessible" parts? Does CPSC need additional authority to exempt inaccessible phthalate parts in parity with the lead scheme of the CPSIA?**

Answer: In February 2009, the Commission requested public comments on draft guidance regarding which children's products are subject to CPSIA requirements for phthalates. (74 FR 8058) Commission staff is currently reviewing those comments, and the Commission plans to issue guidance on the matter shortly. In addition, on August 6, 2009, the Commission voted to issue a *Statement of Policy: Testing of Component Parts with Respect to Section 108 of the Consumer Product Safety*

*Improvement Act*, and requested public comments. The policy statement describes the Commission's position regarding component testing, and the Commission has posted a new test method on its Web site.

Through these rulemakings and policy statements, the Commission has attempted to simplify the phthalate component part and testing guidance as much as possible. With regard to phthalate parts that are completely inaccessible and present no risk of leaching (i.e., a moving belt enclosed in a hard plastic case), the Commission is reviewing whether Section 108 of the CPSIA contains flexibility to allow an exemption from the overall prohibition as a part of the ongoing rulemaking.

**12. What is the status of the Chronic Hazard Advisor Panel (CHAP), which is tasked with a scientific review of phthalates?**

Answer: The CPSC staff is in the final stages of compiling a list of possible candidates for Commission consideration. Staff received names of scientists from the National Academy of Sciences (NAS). The nominees have been contacted by the staff and asked to indicate their interest in serving on the CHAP. Responses have been received from most, but not all, of the nominees. Once the information provided by the interested nominees has been reviewed by the CPSC Office of General Counsel's ethics officials for conflicts of interest and cleared, staff will forward to the Commission a proposed list of candidates for the CHAP. The staff hopes to transmit its recommendations to the Commission in November. The Commission will then vote on the information provided to them.

**Do you plan to make the participants of the CHAP public?**

Answer: Yes, we will make the participants of the CHAP public.

**AGENCY SUPREMACY**

**13. Since the effective dates of the CPSIA have gone into effect, the Commission has issued more than one stay of enforcement. Additionally, you stated in your August 18, 2009 signing statement an intention to focus the Commission's enforcement priorities to a smaller world of products than that laid out in CPSIA. However, the law grants State Attorneys General enforcement of CPSIA. Do you believe the Federal agency should have the primary authority in interpreting a Federal law? How can Federal agency supremacy be reconciled with State Attorneys General potential enforcement in areas in which the Commission has yet to pursue enforcement and will not pursue enforcement due to the issued Federal stays of enforcement?**

Answer: As discussed above in response to question 7, while we should have the primary responsibility and authority for interpreting federal law, legally the state attorneys general can pursue their own injunctive proceedings. The law allows the Commission to intervene in a case filed by a state that should allow us to protect the

Commission's interests in interpreting the federal law. We are working to coordinate federal and state enforcement activities with the state attorneys general to avoid the situation where the states take enforcement positions different from those of the Commission. We have recently met with several assistant and deputy state attorneys general with responsibility for consumer health and safety and plan to continue quarterly meetings with them to discuss and coordinate our enforcement activities.

- 14. One of the purposes behind the CPSIA was the establishment of bright-line, uniform legal safety standards. How does the Commission intend to maintain the bright-line rules established by the CPSIA if Commission interpretation is preempted by State Attorneys General enforcement due to the Federal stays of enforcement?**

Answer: To date this has not proven to be a concern as no state has filed such an action. As discussed in response to question 13 above, we have recently met with and will continue to meet with assistant and deputy state attorneys general with responsibility for consumer health and safety and plan to continue quarterly meetings with them to ensure that they understand our interpretation and enforcement policies with regard to the CPSIA. The FHSA has always contained a provision allowing for state attorneys general to file actions seeking injunctive relief for many years, and the issue of preemption and federal agency supremacy has not presented a problem.

- 15. Please detail the Commission's efforts in working with State Attorneys General to create a uniform enforcement scheme that assures consumers and businesses will be treated consistently in every state.**

Answer: As noted in the answer to question 13, the Commission recently met with assistant and deputy state attorneys general with responsibility for consumer health and safety and will continue to meet with them on a quarterly basis to discuss and coordinate federal and state enforcement efforts. At our most recent meeting we discussed the importance of cooperation and uniformity in enforcement. Through these meetings, and other efforts, the Commission strives to coordinate enforcement activities with the States to the maximum extent possible.

#### **EXEMPTIONS FROM LEAD LIMITS**

- 16. In your July 17 statement accompanying the Commission's denial of the request to exclude crystal and glass beads from the CPSIA lead provisions, you stated:**

**"In making a determination, I was mindful that the statute does not use the term 'harmful' amount... which would allow staff to utilize a risk based approach... Thus, while Commission staff recognized that most crystal and glass beads do not appear to pose a serious health risk to children... the request for an exclusion must be denied."**

- a. **Do you support banning products from the marketplace that have been scientifically proven to present no unreasonable risk of harm?**

Answer: With regard to crystal beads, data provided to staff indicated that there may be some absorption of lead from ingestion depending on the type and amount of beads swallowed. In the CPSIA, certain other children's products containing lead and phthalates were banned by limits set on their content. When the CHAP finishes its work on the three phthalates that have been banned on an interim basis, the Commission will revisit those limits. Otherwise, the CPSA and FHSA provisions on when a product can be banned remain unchanged and require consideration of risk.

- b. **Do you support statutory exclusions for products and materials that can be scientifically proven to present no reasonable risk of harm?**

Answer: Section 101(b)(1) grants the Commission some authority to exclude certain products or materials where "the Commission, after notice and a hearing, determines on the basis of the best-available, objective, peer-reviewed, scientific evidence that lead in such product will not result in the absorption of any lead into the human body nor have any adverse impact on public health or safety."

In the interest of making effective use of Commission resources, however, it would be helpful to have a narrow exception to the overall Section 101 lead prohibition in cases where a component with lead is required for a functional purpose, contact with the lead is infrequent, and the elimination of such component part is impracticable or impossible based on available scientific and technical information. This exception would provide the Commission with greater flexibility.

17. **In your July 17 statement accompanying the Commission's denial of the request to exclude crystal and glass beads from the CPSIA lead provisions, you stated, "the agency will take a common sense approach to enforcement," and that the Commission "will focus [its] enforcement activities on crystal and glass bead products designed and intended primarily for children six years of age and younger[.]"**

- a. **Please explain the basis for the determination that the CPSC should limit its enforcement activities in this way.**
- b. **Are there other areas in which you foresee the CPSC using enforcement discretion to focus on products manufactured for an age range of less than 12 years?**
- c. **Does this enforcement decision mean that companies do not have to report such products under 15(b) of the Consumer Product Safety Act (CPSA) and will not face civil penalties for sales of such products?**

- d. **Does this enforcement guidance provide relief from State Attorneys General enforcement? Does the CPSC have or intend to enter agreements with the State Attorneys General in which the State will honor the Commission's decision to focus enforcement on products for children 6 and under?**

Answer: Enforcement decisions are generally matters that are left to agency discretion. In this case, my July 17, 2009, statement indicated that the focus of enforcement actions would be on products designed and intended primarily for children 6 and under. This reflects a Commission enforcement policy determination, and does not impact the underlying statutory provisions.

As noted in the answers to questions 7 and 13, we have already met with and plan to have quarterly meetings with the states to discuss enforcement efforts. We are working to coordinate federal and state enforcement activities with the state attorneys general to avoid the situation where the states take enforcement positions earlier than or different from those of the Commission. Furthermore, the law allows the Commission to intervene in a case filed by a state which should allow us to protect the Commission's interests in interpreting the federal law.

18. **In your August 18 signing statement accompanying the Commission's decision on printed materials, you stated, "older children's books did not use the modern CMYK printing process and some have been able to contain lead, [therefore] the Commission was unable to make a determination that older books...do not exceed the CPSIA's lead limits." In the same paragraph, however, you state the Commission intends to issue a separate statement of policy on such books that may still be lent out by libraries or other institutions for use by children. You said, "It is my hope that this guidance will offer common sense solutions that alleviate undue burdens on those who lend older children's books." Please explain from where you will derive the authority for a solution permitting the continued lending and use of these books if they exceed the 600ppm or 300ppm standard and can result in the absorption of some lead, such that they are not eligible for an exemption under CPSIA.**

Answer: The Commission is continuing to look at the lead levels in children's books manufactured prior to 1985, and is continuing to test those books in order to make additional determinations.

With regard to the policy guidance, that document will integrate the results of the ongoing testing. Furthermore, the Commission has determined that many older books are not used by children (due to the fact that they wear out quickly), and still others may be used by adults as older "collector's items." In that context, they may not be subject to the Section 101 lead limits.

- 19. How does the Commission intend to address an environment potentially made more dangerous for children by the CPSIA standards because they use replacement products not primarily intended for use by children? Does the Commission have the flexibility and authority to exempt certain children's products, even though they may not meet the CPSIA exemption standard, in order to protect their safety? For instance, children's use of adult-sized all terrain vehicles (ATV) is far more dangerous to their safety and lives than the possibility of lead exposure from ATV parts on a child-fitted ATV.**

Answer: CPSIA section 101(a) explicitly limits the exceptions to the general rule that children's products exceeding the lead limits must be treated as banned hazardous substances. In the case of youth ATVs and certain other motorized vehicles intended for children, the Commission recognized that strict enforcement of the new lead limits could increase the risk of injury to children rather than reduce it as intended. Nevertheless, the Commission did not exempt such vehicles from the lead limits entirely; rather, the Commission adopted a temporary stay of enforcement of the lead limits for certain component parts of such vehicles. To date there have only been a few products where strict enforcement of the new lead limits could potentially increase the risk of injury to children.

- 20. Is it possible that certain products that are compliant with the total lead limit could have more accessible lead available to be absorbed than products excluded from the market, such as crystal, that have less accessible lead? Would a solubility standard encompassing risk be more protective or less protective of children?**

Answer: It is possible, *on a case-by-case basis*, that a lead-content compliant product could have more accessible lead than a product that is not compliant with the lead content requirement. Limited data (provided by industry; letter from Sheila Millar, representing the Fashion Jewelry Trade Association, *et al.*, dated February 2, 2009) on leaching of lead into a mild acid solution from crystal beads showed that some bead samples had very little accessible lead, but other beads leached higher amounts of lead. From CPSC staff analysis of lead accessibility from compliant metal jewelry items, in some cases, the accessibility of lead from a crystal bead would be less than from a metal item, but in other cases, the accessibility from a crystal bead would be greater.

A lead content limit that is more than zero could result in some lead exposure in children, depending on the characteristics of the product and the expected interactions between a child and the product. Further, given a particular lead content standard, it is not possible to generalize expected or potential lead exposure for children's products because of the inherent variability among products and children's behaviors. A solubility standard would require that a test method be designated and a soluble lead limit be chosen. The choice of an "acceptable" lead exposure level is not straightforward, because there is no known level of exposure to lead that is safe for children.

- 21. If child-sized ATVs cannot be made to meet the 600ppm, 300ppm, or 100ppm lead limits, how do you intend to deal with these products when the ATV exemption expires? Is a legislative fix needed to provide such authority?**

Answer: During the pendency of the stay of enforcement, the Commission is continuing to work with the ATV manufacturers to bring them into compliance with the lead limits contained in Section 101. In the interest of making effective use of Commission resources, however, it would be helpful to have a narrow exception to the overall Section 101 lead prohibition in cases where a component lead is required for a functional purpose, contact with the lead is infrequent, and the elimination of such component part is impracticable or impossible based on available scientific and technical information. This exception would provide the Commission with greater flexibility.

- 22. At the Subcommittee hearing, you stated rubber grips could be used to prevent youth ATV operator exposure to lead in the metal handlebars. However, under the Commission's August 2009 final interpretative rule on inaccessible component parts in children's products containing lead, hundreds of other parts of these vehicles, such as engines, suspensions, carburetors and frames, with which child operators do not normally or routinely interact are also deemed accessible and thus subject to the lead content limits. Because of this fact -- and despite the stay of enforcement, many companies have ceased selling youth ATVs for children under 12, which may unfortunately lead these children to ride larger, faster adult-size ATVs on which CPSC studies show they are at much greater risk of serious injury or death. Should this interpretative rule be revised to specify that with respect to youth ATVs and other youth motorized recreational vehicles, only those components, such as hand grips, brake and clutch levers, throttle controls, ignition keys and seats, with which child operators routinely interact during normal and reasonably foreseeable operation of the vehicle will be considered accessible and thus subject to the lead content limits?**

Answer: As noted in the answer to question 21, the Commission is continuing to work with youth ATV manufacturers during the pendency of the stay of enforcement to address specific issues of accessibility and inaccessibility.

- 23. Art supply manufacturers have been required since 1988 to test and certify under the Labeling of Hazardous Art Material Act (LHAMA), including testing and certification for lead content. Does the Commission have the authority those products or materials already subject to Federal testing requirements to avoid duplicative and unnecessary testing?**

Answer: CPSIA section 102(f)(2)(C) provides a special rule allowing organizations who are qualified, under CPSC regulations, to certify art materials, to qualify as third party conformity assessment bodies "with respect to the certification of art material and art products" without meeting any additional requirements. CPSC staff does not

interpret this privilege as exempting anyone from testing art materials for purposes of establishing compliance with section 101 lead limits.

#### TRACKING LABELS

- 24. There is an exception to the tracking label requirement if placing such labels on consumer products or packaging would be "impracticable." What does "practicable" entail in your opinion? Should the word "practicable" encompass the economic practicality of these tracking labels, in addition to the technological feasibility of placing them on consumer products?**

Answer: The CPSIA provides an exception to the tracking label requirement when placing such labels on products or packaging would be impracticable. On July 20, 2009, the Commission issued a statement of policy on interpretation of the tracking labels provision that recognized that the statutory provision does not require a uniform one-size-fits-all system. The Commission announced that it "is not imposing any such uniform requirements, but expects that manufacturers will use their best judgment to develop markings that best suit their business and products." I look forward to working with industry on these tracking labels as they clearly will aid in determining the origin of the product in the event of a recall. Different products have differing levels of risk and cost which are both factors in determining what kind of tracking labels should be used on a product. There are exciting new technologies that are and will become available in the future for consumer use in tracking products. Finding the right tracking solution for the right types of products and harmonizing those requirements with systems being developed in Europe and elsewhere will be something the Commission works diligently to pursue in the coming years.

#### GENERAL

- 25. Please provide statistics regarding the impact of CPSIA on the relative safety of children's products.**

Answer: It is too early to estimate the impact of the CPSIA on the safety of children's products.

- 26. One of the chief criticisms of early CPSIA implementation was the Commission's slowness in responding to industry concerns or the issuance of guidance.**

- a. Specifically, the Commission reportedly received approximately 9,000 questions regarding how interested parties may comply with the new law. How many of those questions have been answered? Does the Commission intend to answer each of these questions? What impact does answering these questions have on Commission resources? What do you expect the continued impact on resources will be? Generally,**

**what is the current state of Commission outreach to various affected industries?**

Answer: When the CPSIA was enacted the Commission very quickly received thousands of questions from individual parties. Many of those questions were received before the Commission had a chance to thoroughly study the new requirements in the Act and before there was time to educate the Commission staff about those requirements. We took the approach of reviewing the questions for major themes and then posting Frequently Asked Questions (FAQs) and responses on our newly created CPSIA web site. Soon after the volume of questions rose dramatically, we provided an automatic response to those individuals who submitted their questions through email indicating that their question was important to us and that while we would not be able to respond to each question individually, we would be developing responses to FAQs. The response also noted that individuals could sign up to receive email notification when new information was added to the CPSIA web site. Responding to the questions has a significant impact on Commission resources and takes time away from important activities such as rulemaking and work on emerging hazards. We recognize, however, the need to provide responses to our stakeholders and are looking for ways to provide those responses more efficiently.

For example, beginning in FY 2010 we have contracted for a new provider for our hotline services. The new provider has the ability to take CPSC-approved FAQs and turn them into automated email responses based on key word searching through the use of a “knowledge-based” email management database. This new database will allow hotline staff to accurately respond to questions posed through email using agency-approved FAQs and scripts. In addition, this software has the ability to search individual emails for keywords and phrases and provide automated form responses, thus preventing email backlogs like we saw when CPSIA was implemented. The system will also track new trends in email and telephone inquiries and identify when new scripts need to be developed.

We have done and are continuing to do extensive outreach to affected industries. We have published enforcement guidance and policies to enhance compliance with the new law, held numerous public briefings to help stakeholders understand their obligations under the law, created a special web site devoted to posting information and answering questions about CPSIA, and responded to thousands of inquiries from affected manufacturers, retailers, resellers, and consumers.

**CPSC RESOURCES**

**27. In her March 20th response to Mr. Dingell, then-Acting Chairman Nord suggested a lack of resources impacted not only CPSIA implementation, but also the Commission’s other non-CPSIA safety mission activities. Specifically, she stated that CPSIA implementation, requests for CPSIA exclusions, Virginia Graeme Baker Pool and Spa Safety Act, the Children’s Gasoline Burn Prevention Act, and the rest of the CPSC’s ongoing safety mission “severely**

*overstretched the agency staff and has begun resulting in delays in implementation that will continue until we are able to fully hire and otherwise maximize the resources that have just been provided to the agency for the second half of fiscal year 2009.” Similarly, in your August 18 signing statement excluding certain materials from testing and certification you stated “The Commission has limited resources to make these types of determinations while also vigorously attempting to implement other provisions of the CPSIA and carry on the day to day business of the agency.”*

**a. Where do the Commission resources now stand?**

Answer: CPSC’s appropriated funds in 2009 were \$105.4 million to fund 483 staff. For 2010, the President’s request pending before Congress for CPSC is \$107 million to fund 530 staff. The House has approved a \$118 million level for 2010 while the Senate Appropriations Committee has reported out a level of \$115 million.

**b. How will the delay in additional resources affect continued implementation of CPSIA – either mandated actions or CPSIA-related actions such as exemptions?**

Answer: The full 2009 appropriation was not enacted until the sixth month of fiscal year 2009. This resulted in delays in staffing up to the desired 483 employee level; we are only now approaching the desired 2009 staffing level.

**c. How many exemption requests has the Commission received? How many requests has the Commission responded?**

Answer: The Commission has procedures for requesting a determination that a certain material or product does not and would not exceed the lead content limits. The Commission has received approximately 270 requests for lead determinations. These requests were all addressed in the determinations rule, which is codified under the Commission’s regulations at 16 C.F.R. § 1500.91. The Commission also has procedures for requesting an exclusion from the lead content limits for a material or product that exceeds the lead limits. Five requests have been received to date (youth motorized recreational vehicles, bicycles and related products, pens, crystal and glass beads, and brass and mechanical components in toys). Four of these requests have been addressed by the Commission. The brass and mechanical components in toys request is currently pending before the Commission.

- d. Are the Commission's other safety tasks negatively impacted by the resources demanded by the CPSIA and its mandated timelines?

Answer: One of our highest priorities has been the implementation of CPSIA. As a result, we have had to defer several hazard reduction projects that promise long-term decreases in consumer product-related injuries and deaths. These deferred hazard reduction efforts include activities for products such as cigarette lighters (mechanical malfunction), lighter amendments, bedclothes, range extinguishing systems, sensor technology, carbon monoxide alarms, high energy battery packs, bicycle integrity and illumination, sensitizers, and electric toys. We have, however, maintained our pressing consumer product safety activities such as product recalls and safety information campaigns.

28. In her March 20th response to Mr. Dingell, then Acting Chairman Nord suggested that due to the Commission's limited resources and its ongoing safety mission in non-CPSIA areas combined with the significant new responsibilities imposed under CPSIA, *"The deadlines have proven to be impracticable for our staff to meet and are presenting significant problems for the agency to solve. The Commission staff must have some relief from the deadlines imposed."* Do you believe this is still the state of resources versus burden at the Commission?

Answer: Six months have passed since this letter was sent and after much hard work by the Commission, I believe we have turned a corner. We have much hard work ahead of us, including completion of scheduled rules, perhaps refining earlier rules, and beginning the enforcement of the new rules. Each day, however, we are hiring more staff and Congress has signaled increased resources for 2010. Thus, I believe the case for relief from statutory deadlines is now substantively diminished.

29. Due to the timing of the passage of this Act and the House appropriations bills, we did not specify an authorization level for FY 2009. However, we recognized the massive burdens we placed on the Commission and authorized the CPSC at \$118 million for FY 2010.

- a. At what level were the Commission's appropriations for the current fiscal year, FY 2009, and when did those funds make it to the Commission?

Answer: The 2009 appropriation of \$105.4 million was enacted March 11, 2009. The Office of Management and Budget (OMB) approved our apportionment request for use of the funds on April 15 with one exception. OMB placed apportionment restrictions on the use of funds allocated for the creation of the public database and information technology modernization. These restrictions required certain processes and documents be completed and approved by OMB before funds were

available for CPSC use later in the fiscal year. The majority of these funds were made available by mid-September.

**b. How many rulemakings or other agency actions were mandated to be completed by the CPSIA in FY 2009?**

Answer: The CPSIA required a total of 16 rules or other documents in fiscal year 2009. The CPSC began and, in most cases, completed 15 required rules and other documents and completed the majority on time despite tight statutory deadlines. (In one case, the CPSIA required the Commission to issue a final rule by a particular date; the Commission issued the proposed rule, but, due in part to a need to comply with other rulemaking requirements, was unable to issue the final rule by the date. In another case, the CPSIA required the Commission to consult interested parties on the toy standard, and the Commission fulfilled this requirement by issuing a notice in the *Federal Register* inviting public comment.)

The number of completed assignments required by the CPSIA, however, is only a partial accounting of the Commission's actual workload. For example, in some cases, a statutory requirement under the CPSIA triggered a need for the Commission to issue a proposed rule before it could issue the final rule required by the CPSIA or to issue an interpretative rule, a statement of policy, or some guidance so that interested parties could understand the Commission's interpretation of a particular requirement or could learn how to request an exemption or to pursue some other administrative action. When one considers these other rules and documents that help implement, but are not required by, the CPSIA, an *additional* 20 rules and other documents were completed during fiscal year 2009.

The only item required by the CPSIA which the Commission did not begin during the fiscal year was a "notice of requirements" relating to baby walkers, walker jumpers, and bouncers. The Commission did not begin the assigned task because the regulation specified by the CPSIA pertaining to baby walkers, walker jumpers, and bouncers was obsolete, and the Commission proposed instead to withdraw the cited regulation. Thus, it would have been inefficient and a waste of resources for the Commission to issue a notice of requirements pertaining to an obsolete rule.

**c. Did the delay in appropriations have any impact on the implementation of this law?**

Answer: Yes. Commission staff had to undertake CPSIA work beginning immediately upon enactment of CPSIA (August 14, 2008). Without an increase in staff, several product hazard projects were deferred in order to free up staff time for CPSIA work. These deferred hazard reduction

efforts include activities for products such as cigarette lighters (mechanical malfunction), lighter amendments, bedclothes, range extinguishing systems, sensor technology, carbon monoxide alarms, high energy battery packs, bicycle integrity and illumination, sensitizers, and electric toys.

- d. Given that the budget request for FY 2010 is \$107 million, \$11 million less than the authorization, what impact do you foresee on implementation of this law, along with pursuit of the rest of your mission?**

Answer: As we work with CPSIA, we have learned more about the requirements. As issues are addressed, we have encountered a need for greater resources. Thus, I am grateful that the House and Senate appropriations committees have reported out resource levels greater than the original request. If these funds are appropriated we will put them to good use in continuing to implement CPSIA and addressing other critical safety issues.

- 30. The March 20th response CPSC staff memo indicated that the timelines for rulemaking and certification of testing labs were one example where there is a mismatch in the law. Specifically, the baby bouncer standard is out of date and the Commission doesn't rely on it as it will have a new standard by February of 2010. Accrediting labs to test to a standard the Commission does not rely on was properly viewed by Commission staff as incongruous. Ultimately the Commission has wisely proposed to revoke that standard and continue relying on the industry standard. Are there similar problems caused by the mandated rulemakings and certifications that could be fixed with more time for the Commission? Would you agree it is better to have more time as a safety net rather than find out too late that the Commission does not have sufficient time to effectively implement CPSIA mandates?**

Answer: In the approximately three months since I assumed the Chair, the Commission has released 12 substantive rules and policy guidance documents implementing various provisions of the CPSIA. I am also committed to meeting the remaining deadlines in the CPSIA. It is true, however, that the Commission still requires additional funding and staff resources to effectively implement the CPSIA, and the other emerging hazards that the Commission investigates.

- 31. Various laws administered by the CPSC use terms such as "technological feasibility," "practicable" and other similar phrases. What specific considerations do you think are important in looking at technological feasibility or practicability? In particular, should costs or economic impact be factored into these assessments? Why or why not?**

Answer: Cost and economic impact are relevant to interpreting terms such as "technological feasibility" and "practicable." These terms are used in very specific

and limited places in the CPSIA and where they are used we have already embraced them in our interpretations.

#### **RISK ASSESSMENT**

- 32. CPSC follows a risk-based decision-making process in setting priorities and in rulemaking. Do you agree with this regulatory philosophy used at the CPSC? Does the current adoption of the CPSIA contradict or prevent this long standing policy?**

Answer: The findings and purposes section of the Consumer Product Safety Act (codified at 15 U.S.C. 2051) provides that the Commission's overall, general mission is to "protect the public against unreasonable risks on injury associated with consumer products." In the CPSIA, however, Congress decided that certain areas, such as lead and phthalates in children's products, required bright-line standards.

These provisions are not contradictory; rather they express Congressional intent to apply a stricter standard to certain classes of materials and products intended for children. To this end, the Commission generally prioritizes its rulemaking based on degree of risk, except in those areas (such as lead and phthalates) where Congress has deemed certain materials as inherently risky, and has established bright-line tests for those materials.

- 33. Do you believe safety would be compromised if human factor studies that monitor what small children touch and play with were included as part of an evaluation to determine whether there is even a risk of exposure associated with certain products that don't meet the lead standards – such as the tire valves on a bicycle that are rarely touched and generally unavailable to small children?**

Answer: Prior to the CPSIA implementation, CPSC Human Factors and Health Sciences staff routinely considered both the exposure to a chemical such as lead (*i.e.*, through children's mouthing, hand-to-mouth behaviors, or ingestion) and the toxicity of the chemical to determine an exposure level at which the chemical might be considered a hazardous substance under the Federal Hazardous Substances Act. Because the CPSIA provides specific lead content limits, rather than exposure limits, this type of assessment is not called for at present.

However, human factors analysis is part of an evaluation as to whether certain products could be excluded from the CPSIA lead content requirements. CPSC Human Factors staff have assessed children's interactions with products and components, such as the tire valve on a bicycle. Staff concluded that compared to children's interactions with components such as handle bars and levers, children will have less frequent contact with tire valves, but that older children are likely to have such contact when inflating or deflating a bicycle tire. This conclusion, in conjunction with the industry-supplied data (letter from Erica Z. Jones, representing the Bicycle Product Suppliers Association, dated January 28, 2009), that showed that some

exposure to lead could occur when a child handles components such as tire valves resulted in the Commission's decision to not exclude such products from the lead content requirements of the Act.

If the Commission were to evaluate products based on exposure and risk, as discussed above, questions remain as to the appropriate test methods, the limit for lead solubility or lead exposure that should be designated, and, if the lead content requirement still applies to children's products, the specific product types that would be subject to an exposure assessment rather than the lead content requirements.

**34. Most regulatory and enforcement authorities use a risk-based system to target violations, including the CPSC's joint operations with the Custom and Border Protection.**

**a. How do you see this principle being applied in CPSIA-related rulemakings and in CPSIA-related enforcement?**

Answer: CPSC's Office of Compliance is responsible for enforcing CPSIA requirements as well as other standards and regulations. The Office of Compliance uses a variety of approaches, including risk factors, to establish priorities for enforcement each year. In some settings, we use screening criteria to zero in on violations that pose a relatively greater risk. Risk assessment also plays a major role in deciding the appropriate remedy for violations. For example, if a violation is considered to present a low risk to consumers, CPSC staff may ask the responsible party to stop sale of the item but not seek a consumer-level recall. On the other hand, if a violation is considered to present a high risk, the staff would always seek a recall and may take other action.

**35. Is the agency ready to patrol safety using its discretion and new enforcement tools? Would the agency have an easier time (be more effective) if the rules permitted it to revert to risk assessment, rather than patrolling compliance with a one-size-fits-all standard?**

Answer: A bright-line standard may be easier to enforce, in some cases, than an approach that is based on risk alone. Where enforcement resources are scarce, however, as is certainly true in the case of CPSC enforcement staff, it is important not to lose sight of risk in deciding where to focus enforcement. Vigorous pursuit of minor violations is not in the public interest if it means that other, higher risks go unaddressed. As explained in the response to question 34, CPSC's Office of Compliance tends to use risk assessment at several decision points in enforcement, such as deciding what products to target and what remedies are most appropriate for a particular violation.

**36. Does the lead content standard present a contradiction in what presents an unreasonable risk of harm by permitting certain products to be legally entered into commerce because they are below the total lead limit, but which may have**

**more soluble lead than non-compliant products that exceed the total lead limits but have less soluble lead available to the child? Do you think that materials should be excluded from total lead limits if they are demonstrated to result in exposure to lead in amounts no greater than the exposure of products that comply with the total lead limits?**

- a. **Regarding lead content and items that do not meet the total lead content limits but may only leach trace amounts of lead, during the hearing you indicated that the Commission isn't looking at the potential effect of just one item's risk of exposure if swallowed, but rather the risk of the aggregate effect if many of the like items were swallowed. How is this different than the risk that potentially exists for legally compliant products if multiple items were swallowed?**

Answer: The Commission is enforcing the statutory lead limits in Section 101 as provided by Congress, which apply to a children's product or a component part thereof. Enforcing an "aggregate impact" or "cumulative effect" standard for lead in multiple children's products would require congressional action.

- b. **Is the Commission proposing to treat children's products, which are legally compliant under CPSIA's lead limits, as banned hazardous products if the aggregate potential exposure to lead resulting from swallowing multiple items presents an unreasonable risk of injury? If so, please indicate at what level the Commission would consider necessary to trigger such a determination.**

Answer: No, the Commission has not taken this position.

**37. Please provide any information the Commission has to support your testimony that swallowing 50 beads presents a health risk to children regarding lead ingestion.**

- a. **Please provide any supporting data regarding the amount of lead that is leached and the resulting effect on blood lead level.**

Answer: It is important to note that my decision to deny the Fashion Jewelry Trade Association's request to exclude crystal and glass beads contained in children's jewelry and other products from the lead content limits was based on the statutory language of the CPSIA. The amount of lead contained in the crystal bead that were tested ranged from 900 ppm to 23,000 ppm—in excess of the statutory limit set by Section 101(1) of the CPSIA, which was 600 ppm at the time and the data submitted by the FJTA indicated that some lead could be absorbed into the body.

Information about crystal beads and data on the potential exposures to lead from crystal beads was provided by the industry in their request for an exclusion from the CPSIA-

mandated lead limits (letter from Sheila Millar, representing the Fashion Jewelry Trade Association, *et al.*, dated February 2, 2009). The letter stated that a children's jewelry item would typically include 4-18 beads or stones, depending on the size of the stones.

The data for 18 types of crystal beads of varying sizes showed that extraction of lead from the beads using a mild acid solution (to evaluate possible exposure to lead if the beads were swallowed) ranged from 0.01 microgram per bead to 2.8 micrograms per bead. The former value might be considered to be so small as to be insignificant to a child's health and overall lead exposure, but ingestion of the latter sample could be considered to be an important source of a child's lead exposure that should be avoided. An abundance of research has demonstrated that there is no safe level of lead exposure. Any exposure to lead by a child that results in absorption of some lead into the body will add to a child's overall lead exposure and will have an impact on the child's blood lead level, regardless of whether a change in the blood lead level could be detected. The language of the CPSIA specifically addresses the concern about lead exposure and provides that the Commission may exclude a product from the lead limits only if it determines that the lead in the product will not result in the absorption of any lead into the human body, considering normal and reasonably foreseeable use and abuse of the product by a child, including swallowing, mouthing, breaking, or other children's activities.

The industry provided the CPSC data stating that the amount of lead exposure for the largest bead was 2.8 micrograms per bead. That number multiplied by 50 results in 140 micrograms of lead as the possible exposure.

An exposure at this level would likely result in the blood lead level increasing by several micrograms of lead per deciliter of blood. The CPSC staff had previously estimated that an acute exposure to lead by a small child could change the blood level in micrograms per deciliter by a factor equal roughly 1/20 of the ingested amount. In this case, the increase in blood lead level would be about 7 micrograms per deciliter. This would be in addition to the other sources of exposure the child already experiences. For some children, this additional lead exposure would result in the blood lead level exceeding 10 micrograms per deciliter. Once the source of exposure is removed from a child's environment, the blood lead level will slowly decrease, returning to the previous level over many months.

In 1991, the U.S. Centers for Disease Control and Prevention (CDC) set its "blood lead level of concern" that could cause adverse health effects at 10 micrograms per deciliter. The CPSC adopted the CDC's recommendation of 10 micrograms per deciliter as the threshold lead amount in determining whether to list a product as banned under the Federal Hazardous Substances Act. Research conducted since 1991 has strengthened the evidence that children's physical and mental development can be affected by blood level limits at less than 10 micrograms per deciliter.

**b. Would a child swallowing 50 beads be a "foreseeable use and abuse"?  
If so, please provide supporting data.**

With regard to foreseeable use and abuse, I will summarize data provided to the Commission on child ingestions.

The National Electronic Injury Surveillance System (NEISS) is a probability sample of approximately 100 U.S. hospitals having 24-hour emergency rooms (ERs) and more than six beds. NEISS collects injury data from these hospitals. Coders in each hospital code the data from the ER record and the data is then transmitted electronically to CPSC. Because NEISS is a probability sample, each case collected represents a number of cases (the case's *weight*) of the total estimate of injuries in the U.S. Different hospitals carry different weights, based on stratification by their annual number of emergency room visits (Schroeder and Ault, 2001).

Hazard Analysis staff searched NEISS for all cases with diagnosis code 41 (Ingested Foreign Object) and patients 18 years of age or younger. Staff then used SAS<sup>®</sup> version 9 to categorize the data by product code and age categories by quartile, and to compute estimates and the associated coefficients of variation for the number of injuries as well as the estimated number of injuries with particular characteristics such as age and associated product. A coefficient of variation (C.V.) is the ratio of the standard error of the estimate (i.e., variability) to the estimate itself. This is generally expressed as a percent. A C.V. of 10% means the standard error of the estimate equals 0.1 times the estimate. Large C.V.'s alert the reader that the estimate has considerable variability. This is often due to a small sample size.<sup>1</sup> Estimates and confidence intervals are not reported here unless the number of cases is 20 or more, the estimate is greater than 1,200, and the C.V. is less than 33%.

From 2000 to 2006 staff found 14,421 NEISS cases involving ingestion of a foreign object and a child aged 18 years or younger. Based on these 14,421 cases there were an estimated 365,108 emergency-room treated injuries from 2000 to 2006 involving a child 18 years old or younger ingesting a foreign object. The 95% confidence interval about the number of emergency-room treated injuries from 2000 to 2006 for children 18 years of age or younger is 307,562 to 422,653. A breakdown of the incidents by age group is given in Table 1. The age groups in Table 1 were chosen based on quartiles of age using estimated injuries.

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<sup>1</sup> For a more detailed discussion of measures of variation associated with NEISS estimates, see Schroeder and Ault, 2001.

**Table 1: Emergency-Room Treated  
Ingestions by Age Group, 2000-2006**

Age Range	Estimate	Percent of Total	Sample Size	C.V.	95% Confidence Interval
0 – 20 months	89,588	24.5%	3,760	9.61%	72,706 – 106,470
21 months – 3 years	116,407	31.9%	4,602	8.52%	96,960 – 135,853
4 – 6 years	85,895	23.5%	3,436	7.89%	72,613 – 99,178
7 – 18 years	73,218	20.1%	2,623	7.83%	61,976 – 84,460
<b>Total</b>	<b>365,108</b>	<b>100.0%</b>	<b>14,421</b>	<b>8.04%</b>	<b>307,562 – 422,653</b>

*Source: National Electronic Injury Surveillance System  
U.S. Consumer Product Safety Commission, April 2007*

The cases were also categorized by the product associated with the ingestion injury. The ten product categories with the highest estimates are shown in Table 2 on the next page. Note that NEISS allows for the coding of one or two products for each incident. An incident with two associated products would be counted twice in the breakdown by product category, once for each product. Of the 14,421 incidents analyzed, 683 incidents had two associated products. There are several situations where two products may be coded for an ingestion. Both products may have been swallowed. If a part of a product is swallowed, such as a battery from a toy, both the part (the battery) and the whole (the toy) may be coded. One product may also be associated with the incident but not swallowed, such as a toddler swallowing a coin found on the floor, with both the coin and the floor being coded.

**Table 2: Top Ten Swallowed Products by Individuals  
18 Years Old and Younger, 2000-2006**

*Based on Number of Estimated Emergency-Room Treated Injuries*

Product Code	Product Code Description	Estimate	Percent of Total	Sample Size	C.V.
1686	Coins	177,523	48.6%	7,340	8.73%
1616	Jewelry	24,366	6.7%	971	9.65%
5004	Toys, not elsewhere classified <sup>2</sup>	23,240	6.4%	896	9.31%
1819	Nails, screws, tacks, or bolts	20,540	5.6%	720	8.04%
0884	Batteries	15,366	4.2%	682	11.78%
1354	Marbles	11,992	3.3%	441	12.67%
1650	Desk supplies	7,251	2.0%	254	10.92%
1682	Hair curlers, curling irons, clips, and hair pins	6,073	1.7%	276	12.42%
1729	Christmas decorations (nonelectric)	5,350	1.5%	213	13.20%
1685	Pens and pencils	5,318	1.5%	185	15.57%

*Source: National Electronic Injury Surveillance System  
U.S. Consumer Product Safety Commission, April 2007*

From 2000 to 2006 staff found 3,760 NEISS cases involving ingestion of foreign objects and children aged 20 months or younger. Based on these 3,760 cases there were an estimated 89,588 emergency-room treated injuries from 2000 to 2006 involving children under the age of 20 months and the ingestion of foreign objects. The cases were categorized by the product associated with the ingestion injury. The ten product categories with the highest estimates are shown in Table 3 on the next page. Of the 3,760 cases analyzed, 250 cases had two associated products.

<sup>2</sup> Toys, not elsewhere classified is a broad category including all toys that do not have their own NEISS product code, and any case where the type of toy involved was not clearly specified. Most cases involved an unspecified toy or part of a toy, but other common toys swallowed from this category include game pieces, puzzle pieces, doll accessories, small balls, and pieces from building sets.

**Table 3: Top Ten Swallowed Products by Children  
20 Months Old and Younger, 2000-2006**

*Based on Number of Estimated Emergency-Room Treated Injuries*

Product Code	Product Description	Estimate	Percent of Total	Sample Size	C.V.
1686	Coins	35,637	39.8%	1,616	12.15%
1819	Nails, screws, tacks, or bolts	6,489	7.2%	219	10.43%
1616	Jewelry	5,817	6.5%	279	13.71%
5004	Toys, not elsewhere classified	5,178	5.8%	196	16.71%
1729	Christmas decorations (nonelectric)	3,851	4.3%	151	15.31%
0884	Batteries	3,681	4.1%	177	12.99%
1682	Hair curlers, curling irons, clips, and hair pins	3,127	3.5%	145	15.09%
1137	Paper products	2,606	2.9%	89	17.83%
1807	Floors or flooring materials <sup>3</sup>	2,555	2.9%	90	19.89%
1650	Desk supplies	2,055	2.3%	79	18.17%

*Source: National Electronic Injury Surveillance System  
U.S. Consumer Product Safety Commission, April 2007*

From 2000 to 2006 staff found 4,602 NEISS cases involving ingestion of foreign objects and children aged 21 months through three years old. Based on these 4,602 cases there were an estimated 116,407 emergency-room treated injuries from 2000 to 2006 involving a child between the ages of 21 months and three years and the ingestion of a foreign object. The cases were categorized by the product associated with the ingestion injury. The eight product categories with the highest estimates are shown in Table 4. Only eight product categories are shown in Table 4 due to low, and therefore unreportable, estimates for all other product categories. Note that of the 4,602 cases analyzed, 167 cases had two associated products.

<sup>3</sup> Note that in the case of product code 1807 (floors and flooring materials), the children are not actually swallowing parts of floors, but rather objects that were found on the floor.

**Table 4: Top Eight Swallowed Products by Children  
21 Months through Three Years Old, 2000-2006**

*Based on Number of Estimated Emergency-Room Treated Injuries*

Product Code	Product Description	Estimate	Percent of Total	Sample Size	C.V.
1686	Coins	70,237	60.3%	2,826	8.66%
5004	Toys, not elsewhere classified	8,101	7.0%	303	12.32%
1819	Nails, screws, tacks, or bolts	5,975	5.1%	206	12.25%
1616	Jewelry	5,250	4.5%	212	11.12%
0884	Batteries	4,942	4.2%	218	13.08%
1354	Marbles	3,432	2.9%	134	20.11%
1682	Hair curlers, curling irons, clips, and hair pins	1,444	1.2%	69	21.01%
1729	Christmas decorations (nonelectric)	1,355	1.2%	52	20.65%

*Source: National Electronic Injury Surveillance System  
U.S. Consumer Product Safety Commission, April 2007*

From 2000 to 2006 staff found 3,436 NEISS cases involving ingestion of foreign objects and children aged four through six years old. Based on these 3,436 cases there were an estimated 85,895 emergency-room treated injuries from 2000 to 2006 involving a child between the ages of four and six years and the ingestion of a foreign object. The cases were categorized by the product associated with the ingestion injury. The seven product categories with the highest estimates are shown in Table 5. Only seven product categories are shown in Table 5 due to low, and therefore unreportable, estimates for all other product categories. Note that of the 3,436 cases analyzed, 92 cases had two associated products.

**Table 5: Top Seven Swallowed Products by Children  
Four through Six Years Old, 2000-2006**

*Based on Number of Estimated Emergency-Room Treated Injuries*

Product Code	Product Description	Estimate	Percent of Total	Sample Size	C.V.
1686	Coins	49,974	58.2%	2,028	8.24%
5004	Toys, not elsewhere classified	6,522	7.6%	265	10.78%
1354	Marbles	5,497	6.4%	185	15.74%
1616	Jewelry	4,584	5.3%	187	11.22%
1819	Nails, screws, tacks, or bolts	3,391	3.9%	139	14.29%
0884	Batteries	3,148	3.7%	154	18.87%
0428	Kitchen gadgets, not elsewhere classified	1,271	1.5%	49	22.22%

*Source: National Electronic Injury Surveillance System  
U.S. Consumer Product Safety Commission, April 2007*

From 2000 to 2006 staff found 2,623 NEISS cases involving ingestion of foreign objects and individuals aged seven through 18 years old. Based on these 2,623 cases there were an estimated 73,218 emergency-room treated injuries from 2000 to 2006 involving a child between the ages of seven and 18 years and the ingestion of a foreign object. The cases were categorized by the product associated with the ingestion injury. The ten product categories with the highest estimates are shown in Table 6. Note that of the 2,623 cases analyzed, 174 cases had two associated products.

**Table 6: Top Ten Swallowed Products by Individuals  
Seven through 18 Years Old, 2000-2006**

*Based on Number of Estimated Emergency-Room Treated Injuries*

Product Code	Product Description	Estimate	Percent of Total	Sample Size	C.V.
1686	Coins	21,674	29.6%	870	9.69%
1616	Jewelry	8,716	11.9%	293	11.78%
1819	Nails, screws, tacks, or bolts	4,685	6.4%	156	11.73%
0884	Batteries	3,595	4.9%	133	16.98%
1685	Pens and pencils	3,578	4.9%	116	20.53%
5004	Toys, not elsewhere classified	3,439	4.7%	132	13.61%
1650	Desk supplies	3,212	4.4%	94	18.23%
1103	Self-contained openers <sup>4</sup>	3,000	4.1%	104	15.99%
1669	Pins and needles	2,381	3.3%	88	17.02%
1354	Marbles	2,334	3.2%	88	16.94%

*Source: National Electronic Injury Surveillance System  
U.S. Consumer Product Safety Commission, April 2007*

Coins are by far the most common consumer product ingested, accounting for almost half of the estimated injuries (Table 2) when viewed across age. With respect to age quartiles, the highest percentage of injuries due to ingestion of coins is in the 21 month- through three year-old age group (60.3%) and lowest in the seven through 18 year-old age group (29.6%). The next three most commonly ingested product categories are jewelry; toys, not elsewhere classified; and nails, screws, tacks or bolts. These three are always in the top five regardless of age category, except for the seven through 18 year old age category, where toys rank sixth. The only other product categories to make it into the top five in any age category are batteries, marbles, nonelectric Christmas decorations, and pens and pencils.

<sup>4</sup> Note that product code 1103 (self-contained openers) refers to pop-top openers from soda cans.

**Table 7: Emergency-Room Treated Jewelry Ingestions by Age Group, 2000-2006**

Age Range	Estimate <sup>5</sup>	Percent of Total	Sample Size	C.V.	95% Confidence Interval
0 – 20 months	5,817	23.9%	279	13.71%	4,254 – 7,380
21 months – 3 years	5,250	21.5%	212	11.12%	4,106 – 6,394
4 – 6 years	4,584	18.8%	187	11.22%	3,575 – 5,592
7 – 18 years	8,716	35.8%	293	11.78%	6,703 – 10,729
<b>Total</b>	<b>24,366</b>	<b>100.0%</b>	<b>971</b>	<b>9.65%</b>	<b>19,756 – 28,976</b>

*Source: National Electronic Injury Surveillance System  
U.S. Consumer Product Safety Commission, April 2007*

<sup>5</sup> Columns may not sum to totals due to rounding.

**“The Consumer Product Safety Commission:  
Current Issues and a Vision for the Future”**

September 10, 2009

**Responses of Chairman Inez M. Tenenbaum to Questions for the Record:**

**The Honorable Jan Schakowsky**

1. **It is my understanding that in August, the CPSC granted Mattel an exemption to the requirement that toymakers use independent laboratories to conduct safety tests on their products. As you know, Mattel and its subsidiary Fisher-Price produced six toys that were recalled due to lead contamination in 2007 - affecting millions of toys. Those recalls were part of the reason that we passed the CPSIA in the first place.**

**a. What is the agency’s justification for granting Mattel this exemption?**

Answer: Section 14(f)(2)(D) of the CPSA grants the Commission the authority to accredit a conformity assessment body (or testing laboratory) that is owned, managed, or controlled by a manufacturer, such as Mattel, if the Commission by order finds that the testing laboratory would provide equal or greater consumer safety protection than the manufacturers’ use of an independent testing laboratory and the testing laboratory has established procedures ensuring test results are protected from undue influence by the manufacturer or other interested parties, procedures to ensure the Commission is notified immediately of any attempt to hide or exert undue influence over test results, and procedures to ensure allegations of undue influence can be reported confidentially to the Commission.

To be accredited by the Commission, all third party testing laboratories must be independently accredited to ISO/IEC 17025:2005--General Requirements for the Competence of Testing and Calibration Laboratories. The accreditation must be conducted by a full member of the International Laboratory Accreditation Cooperation--Mutual Recognition Arrangement (“ILAC-MRA”).

ISO 17025 accreditation of a laboratory includes an assessment to confirm the technical competence of the laboratory for certain testing methods and also includes an assessment of a laboratory’s management and organization to ensure safeguards against undue influence. The laboratory must have arrangements to ensure that its management and personnel are free from any undue internal and external commercial, financial and other pressures and influences that may adversely affect the quality of their work.

To meet these criteria, firewalled third party testing laboratories must meet the same ISO/IEC 17025 accreditation requirements as independent third party testing laboratories, including requirements for technical competence, standards for management and organization, and safeguards against undue influence.

In addition, the laboratory must establish procedures to ensure that:

- i) its test results are protected from undue influence by the manufacturer, private labeler or other interested party;
- ii) the Commission is notified immediately of any attempt by the manufacturer, private labeler or other interested party to hide or exert undue influence over test results; and
- iii) allegations of undue influence may be reported confidentially to the Commission.

Application materials submitted by Mattel and reviewed by Commission staff demonstrated the required procedures were in place. The firewalled laboratory employees also received training on the procedures.

**b. I understand that Mattel demonstrated that their testing was protected from corporate influence. How can CPSC ensure that the testing is kept truly separate from other parts of the company?**

Answer: Commission staff reviewed Mattel's organizational charts to ensure the reporting structure properly isolated laboratory personnel from production, sales, and marketing functions. It should also be noted that in order to maintain their ISO/IEC 17025 accreditation, the laboratories undergo periodic audits that include an assessment of a laboratory's management and organization to ensure safeguards against undue influence.

**c. Mattel also sends some toys to third party testers. What percentage of Mattel toys will be tested by the company's own labs?**

Answer: That information is not available to Commission staff.

**d. Are there other companies that have sought this arrangement? Which companies are they and what has been the result for these companies?**

Answer: In addition to Mattel, staff have received applications from two other entities seeking accreditation as in-house firewalled conformity assessment bodies. These applications are currently under review by Commission staff and have not been submitted to the Commission.

2. **In July, the Illinois Department of Public Health, which inspects swimming facilities, estimated that more than fifty percent of pools in the state were not in compliance with the law. Press reports have indicated similar or higher levels of noncompliance in states and cities across the country and there were a number of moderate to severe drain-related injuries over the summer. What is the status of implementation of the Virginia Graeme Baker Pool and Spa Safety Act?**

Answer: CPSC's Office of Compliance and Field Investigations is responsible for enforcement of the Virginia Graeme Baker Pool and Spa Safety Act. In Fiscal Year 2009, CPSC staff inspected nearly a thousand public pools, and more than 300 public spas. We have made compliance determinations for 909 pools thus far; of those 81% were determined to be in compliance. For spas, we have found thus far about 78% in compliance. While our sample is not considered statistically representative of pools and the inspections involved basic screening techniques, these results suggest that much progress has been made and that more work remains to be done.

Our inspections included 54 pools and 29 spas in the State of Illinois. We found that 74% of the inspected pools in Illinois were in compliance—a bit below the national average—and 86% of the inspected spas were in compliance—a bit above the national average.

The Office of Compliance has awarded contracts to a number of state and local jurisdictions to conduct additional pool inspections for the CPSC. One of the successful bidders was Winnebago County, Illinois. The Illinois Department of Public Health also expressed interest in the program, but ultimately declined to bid on the grounds that state law prevented it from complying with the nondisclosure terms of the contract.

3. **Chairman Tenenbaum, as you know, the CPSIA has called for a scientific review of the health effects on children of three of the currently banned phthalates – DINP, DIDP, and DnOP. As I understand it, a Chronic Hazard Advisory Panel (CHAP) of independent scientists is currently being convened to conduct the review.**

a. **What stage is the CHAP process in?**

Answer: The CPSC staff is in the final stages of compiling a list of possible candidates for Commission consideration. Staff received names of scientists from the National Academy of Sciences (NAS). The nominees have been contacted by the staff and asked to indicate their interest in serving on the CHAP. Responses have been received from most, but not all, of the nominees. Once the information provided by the interested nominees has been reviewed by the CPSC Office of General Counsel's ethics officials for conflicts of interest and cleared, staff will forward to the Commission a proposed list of candidates for the CHAP.

**b. When can we expect the panel to be named?**

Answer: The staff hopes to transmit its recommendations to the Commission in November. The Commission will then vote on the information provided to them.

**c. When can we expect the first meeting to take place?**

Answer: After the Commission chooses the CHAP members, they will be polled for availability. The first meeting will take place on a date mutually acceptable to all CHAP members. The meeting date chosen will also have to take into account the time needed to give the public advance notice of the meeting in the Federal Register.

**d. What was the process for vetting the candidates for possible conflicts of interests – and ensuring that the individuals appointed come to the panel without a preformed opinion?**

Answer: The Consumer Product Safety Act (CPSA) specifies criteria for selecting CHAP members (section 28). The CHAP is composed of 7 members appointed by the Commission from a list of 21 individuals who are nominated by the President of the National Academy of Sciences who:

- (1) are not employees of the federal government, except for the National Institutes of Health, National Toxicology Program, or the National Center for Toxicological Research;
- (2) do not receive compensation from or have any substantial financial interest in any manufacturer, distributor, or retailer of a consumer product; and
- (3) have demonstrated the ability to assess critically the chronic hazards and risks to human health presented by the exposure of humans to toxic substance as demonstrated by the exposure of animals to such substances.

In addition to excluding employees of manufacturers of consumer products, the staff also excludes employees of companies that manufacture phthalates, phthalate substitutes, or chemicals with similar properties.

To assess the potential for conflicts of interest, each nominee who was willing to serve completed a conflict of interest form (attached). CPSC attorneys under the direction of the Designated Agency Ethics Official (DAEO) reviewed the forms and curriculum vitae of each nominee. Only nominees approved by the DAEO were given further consideration. Those nominees will undergo even further screening for conflicts before a final list is submitted to the Commission for approval.

Finally, the qualifications of approved nominees are reviewed by CPSC scientists. Recommendations are based on the qualifications of the nominees. The expertise of the CHAP nominees is considered in order to ensure that the required areas of scientific expertise are present on the CHAP.

4. **I understand that the CPSC staff will play a substantial role in supporting and providing background materials for the CHAP. Given this role, I wanted to bring to your attention a rather disturbing story that ran on NPR not too long ago. The story ran several months after the CPSIA became law and focused specifically on the phthalate ban, and it quoted Dr. Marilyn Wind, the CPSC's deputy associate executive director for health sciences, as saying that she is opposed to the phthalate ban because phthalates "posed no risk to children."**

**a. Is Dr. Wind's position that of the CPSC?**

Answer: Dr. Wind, in the NPR interview, was discussing the Commission's prior work on Diisononyl Phthalate (DINP), the phthalate studied in response to a request to ban the use of PVC in children's products intended for children five years of age and younger. This petition was submitted to the Commission in November 1998. Dr. Wind was the project manager for that project. A Chronic Hazard Advisory Panel (CHAP), seven independent scientists recommended by the National Academy of Sciences, was convened to review all the toxicological data available on DINP and make recommendations to the Commission about the toxicity of DINP. The Federal Hazardous Substances Act (FHSA) requires that a substance must not only be toxic but there must also be exposure that would result in an unreasonable risk of injury in order to declare a substance a hazardous substance and ban it. Since there was no exposure data available, CPSC staff undertook a behavioral observation study in which 169 children were observed in their homes and day care sites, and what they put in their mouths and how long the objects remained in their mouths was recorded. In addition:

1. methodology was developed to measure how much DINP migrates out of polyvinyl chloride (PVC);
2. the methodology was validated in an international study;
3. a "chew and spit" study was done in adult test subjects to relate the test method to what might happen in children; and
4. toys on the market were tested.

Based upon the recommendations of the CHAP, the data collected from the behavioral observation study, and the survey of products on the market, the staff did a risk assessment and recommended to the Commission that they deny the petition to ban PVC in toys and other products intended for children five years of age and under. This recommendation was based upon the best scientific data available at that time. In their briefing memo to the Commission, staff concluded, "The staff concurs with the CHAP conclusion

that exposure to DINP from DINP-containing toys would be expected to pose a minimal to non-existent risk of injury for the majority of children. The new data from the behavioral observation study not only confirm this conclusion, but demonstrate that children are exposed to DINP at lower levels than the CHAP assumed when it reached its conclusion.” The Commission voted to accept the staff recommendation and deny the petition. Thus the Commission formally accepted the staff recommendation above. This is the only position that the Commission has taken on phthalates in children’s products to date and it specifically refers to one specific phthalate, DINP. As Chairman, I will ensure that the congressional mandate of the CPSIA to look *de novo* at the issue of phthalates and their health effects on children is followed.

- b. The CPSIA instructs the CPSC to conduct the scientific CHAP *de novo*, from scratch. Given that a number of career staff at CPSC were involved in the previous CHAP and some have made public statements specifically opposing the phthalates provision passed by Congress, should Congress be concerned that government scientists have a predisposition or predetermination ahead of that endeavor?**

Answer: No, the Congress should not be concerned that government scientists have a predisposition or predetermination ahead of that endeavor. The previous recommendation to the Commission was based on sound science and the requirements under the Federal Hazardous Substances Act (FHSA). In preparation for the new CHAP, Commission staff is conducting a complete *de novo* review of the three phthalates temporarily banned by the CPSIA. These reviews of the current literature are from a strictly scientific point of view. The staff toxicity reviews of DINP and other phthalates are also being subjected to outside scientific peer review before being finalized and made available to CHAP members.

A new CHAP is in the process of being formed from nominations submitted by the National Academy of Sciences, as mandated under the Consumer Product Safety Act. CHAP members will review the toxicity of all the phthalates, consider exposure, make recommendations of how to deal with exposure to more than one phthalate, and make recommendations of what level of exposure could cause a risk of injury. In addition to information provided by CPSC staff, CHAP members will also be considering information from the public. The meetings of the CHAP are held in public and will provide opportunities for all points of view to be expressed.

- c. How are you ensuring that the staff’s personal biases do not taint the *de novo* review of the science?**

Answer: Scientific staff does not approach any scientific review with “personal bias.” Review of the science involves evaluation of all studies available based upon well established scientific criteria. The CPSC staff does

not advocate for or against specific chemicals or products; their concerns are focused on assuring scientific integrity and protection of public health.

- 5. I understand that industry representatives have provided materials to the CPSC staff that no doubt reflect their spin on the science relating to phthalates. I also understand that those provided materials will be included in the packet of materials the CPSC staff is providing to the CHAP once appointed.**

- a. How will you ensure that other stakeholders, including public health and environmental professionals and organizations, are given equal access to the process and that the CHAP will ultimately received the full spectrum of science available to best equip them to make a fair and thoroughly informed decision?**

Answer: All CHAP meetings are open to the public. Stakeholders are free to submit comments or information they think the CHAP should consider. That information will all be public and part of the record. The CHAP will hold a public hearing in which they will receive testimony from interested members of the public. This will be announced in the Federal Register and on the CPSC web site.

- b. Will the materials provided to the CHAP be made public at the beginning of the process, and will the source of the materials be identified?**

Answer: To date, no one has submitted data or other materials for the CHAP. Any information submitted to the CHAP will be made available to the public. Copyrighted materials will be cited so individuals can access them but because of copyright law will not be made available to the public.

- 6. Will the CHAP require consensus, offering only one opinion from the 7 panel members; or will individual CHAP members be allowed to offer minority opinions?**

Answer: Section 28(d) of the Consumer Product Safety Act requires that a decision of a Chronic Hazard Advisory Panel (CHAP) be made by a majority of the CHAP. However, an effort is made to achieve consensus among the members of the CHAP. In the event that such consensus is not possible, it has been past practice to provide for differing or dissenting opinions from those presented by the majority of the CHAP.

- 7. There has been some confusion and misinformation about the purpose of the ban on lead in children's products, with some people focusing on death and injury from single exposures to lead as the key problem that the lead ban will address. Congress made clear in enacting the Consumer Product Safety Improvement Act that there is no safe level of lead, and that the risks from cumulative exposure**

**are grave. Can you explain the current scientific understanding with regard to the risks from lead exposure and the impacts on children's health and development from such exposures?**

Answer: CPSC staff have concluded, as have toxicologists in other federal agencies and outside the government, that there is no known safe level of exposure to lead, though it is clear that lower levels of exposure to lead are associated with fewer and less severe effects than exposure at higher levels. The staff also recognizes that it is not possible to completely eliminate lead from products, foods, or the environment, but that limiting lead content of certain products or lead exposures from products may be necessary to protect the health of children.

Lead accumulates in the body, and even small exposures contribute to the overall burden of lead in the body. Both acute exposure (*i.e.*, a single exposure incident or short term exposure) and chronic exposures (*i.e.*, occurring over a longer period of time) to lead could result in adverse health effects. In both cases, relatively high exposures are associated with symptoms of lead poisoning, including serious health effects and sometimes death. Again, lower levels of exposure to lead are associated with fewer and less severe effects than exposure at higher levels. At lower exposure levels, adverse health effects may be subtle, with no obvious symptoms or indications that exposure has occurred. For example, the scientific literature shows that lead exposures resulting in small increases in the amount of lead in children's blood (*i.e.*, 1 microgram of lead per deciliter of blood) is associated with an IQ decrement of 1 to 2 points. This adverse effect would not be obvious in an affected individual child.

- 8. In August 2009, the Commission issued a final rule on, "Determinations Regarding Lead Content Limits on Certain Materials or Products." This rule makes determinations that certain untreated and unadulterated products, including precious gemstones, wood, natural fibers, and other natural materials do not exceed the lead content limits under section 101(a) of the CPSIA. It is not clear from the rule if this determination exempts these products from only the testing requirements of the CPSIA, or both the testing and certification requirements. Could you clarify the intent of this rule?**

Answer: The determinations rule, which is codified under the Commission's regulations at 16 C.F.R. § 1500.91, provides that those materials specifically listed in the rule do not need to be tested. The Commission is currently considering guidance that will explain that no third party testing needs to be done and therefore, no certification is required. The Commission has not yet voted on the guidance but the voted is expected to occur within the next few weeks.

**Chronic Hazard Advisory Panel Questionnaire<sup>1</sup>**

1. Name: \_\_\_\_\_
2. Employment Affiliation:
  - a. Current Position and Description of Duties:  
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\_\_\_\_\_  
\_\_\_\_\_
  - b. Employer's Name and Address:  
\_\_\_\_\_  
\_\_\_\_\_
  - c. Type of organization, e.g., health care, manufacturing, educational, testing laboratory, governmental, public interest, retail. (Please complete this item even if self-employed).  
\_\_\_\_\_
  - d. Telephone number: \_\_\_\_\_
  - e. Consulting work contracts and grants (current or anticipated only): Specify for whom work is done and who receives payment:  
\_\_\_\_\_  
\_\_\_\_\_
3. Financial Interests:
  - a. Companies which you, your spouse, or minor children own or in which you are a partner:  
\_\_\_\_\_  
\_\_\_\_\_

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<sup>1</sup>Office of Management and Budget Control Number: 3041-0139.

- b. Companies or trusts in which you, your spouse, or minor children hold securities (stocks, stock options, bonds, etc.) that are worth more than \$15,000, or which pay you more than \$500 per year:

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- 4. Any other information which you believe might relate to the questions of compensation from, or substantial financial interest in, any manufacturer, distributor, or retailer of a consumer product. (For example, do you have any continuing financial interests, through a pension or retirement plan, shared income or other arrangement as a result of any current or prior employment or business professional association.)

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I certify that this information is true, complete, and correct to the best of my knowledge and belief.

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Signature Date

